LOUISIANA BAR
JOURNAL
February / March 2014 Vol. 61, No. 5

Social Media & The Law

Social Media

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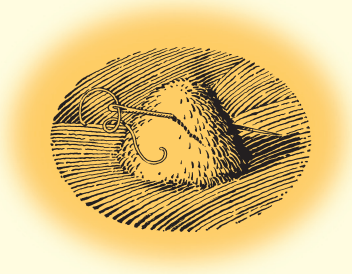
The Needle In A Haystack



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- Fastcase (free online legal research)
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- **CoreVault** – (866)945-2722
- **Geico** - (800)368-2734
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- **LawPay** - (866)376-0950
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- **LaQuinta Inns & Suites**, (866)725-1661
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The following hotels have agreed to corporate discount rates for LSBA members. Call, e-mail or check the website link for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

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- **Hilton St. Charles**, (504)524-8890
- **Hilton Garden Inn**, (504)281-4004
  email: csoler@hriproperties.com
  www.neworleansfrenchquartercbd.hgi.com
- **Hotel InterContinental**, (877)866-9005
  e-mail: dawn.pembo@ihg.com
- **Hotel Monteleone**, (800)535-9595
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  www.frenchquarter.hyatt.com
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  www.hyattplaceneworleansconventioncenter.com
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- **Loews New Orleans Hotel** • (504)595-5370, (866)211-6411
- **Marriott Courtyard Downtown**
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- **Sheraton New Orleans**, (504)595-6292
  e-mail: dana.smith@sheraton.com
- **Westin Canal Place**, (504)553-5110
  e-mail: ashley.bonner@westinneworleans.com
- **The Whitney Wyndham**, (504)581-4222
- **Windsor Court**, (800)262-2662, (504)523-6000
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  e-mail: dbond@executivecenterbr.com
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- **Sheraton Baton Rouge**, (225)378-6177
  e-mail: susan.ringwald@bellofbatonrouge.net

Lafayette

- **SpringHill Suites Lafayette South at River Ranch**
  www.lsba.org/GoTo/SpringHill

Lake Charles

- **Best Western Richmond Suites**, (337)433-5213

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- **The Remington Suite Hotel**, (318)425-5000
  www.remingtonsuite.com

SOLACE: Support of Lawyers/Legal Personnel — All Concern Encouraged

The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee supports the SOLACE program. Through the program, the state's legal community is able to reach out in small, but meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience a death or catastrophic illness, sickness or injury, or other catastrophic event. For assistance, contact a coordinator.

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For more information, go to: www.lsba.org/goto/solace.

What I've Learned (So Far)

By Barry H. Grodsky

It is hard to believe that half a year has passed since I became editor of the *Louisiana Bar Journal*. While the basics can be learned while serving on the Editorial Board, serving as editor is an entirely different story. It has been educational, demanding and quite enjoyable, and I have certainly learned a lot (so far).

1. Being the editor is anything but a mere title. I saw how much my two predecessors, Richard Leefe and Ed Walters, put into the job. Decisions have to be made quickly and implemented just as fast. The Editorial Board gives excellent guidance and input, as well as handling the actual editing of articles. Then the hard stuff takes place. It is difficult to imagine the number of emails and calls I have with Darlene LaBranche at the Bar during the *Journal* production cycle, particularly in the period just before the magazine goes to press.

2. We have a great *Journal*. As part of this job, I have reviewed Bar magazines from several other states. In comparison, I can favorably report that our *Journal* is just as good as (if not better than) some of the others. Our articles are timely and informative, our Recent Developments and articles on members' practices keep us up-to-date, and the information about the activities of the Louisiana State Bar Association (LSBA) and local/specialty bars around the state are important to all of our members. Plus, our themed *Journal*s stack up highly in comparison to the magazines from the few other state bars offering special issues.

3. It is not just the *Journal*. The LSBA also has other great publications, and the timely electronic communications are very important in disseminating information regularly about all of the activities taking place throughout the association.

4. The Editorial Board is unique. While the group serves as a committee, unlike other Bar committees appointed by the president, the Editorial Board is selected by the secretary. There is an excellent cross-section of members serving on this board, both geographically and in their law practices. Some members have several years of experience on the Editorial Board and the new members offer fresh perspectives. Rarely does anyone leave the board, and it is a truly full-functioning board with everyone volunteering on a regular basis. It helps to be able to count on such members.

5. I am amazed at the number of members interested in submitting articles. I have been contacted by lawyers, judges and teachers. I have been contacted by an attorney in Australia and another from Scotland about making submissions. I was even complimented (of course, on behalf of the *Journal*) by a law librarian from a Midwestern law school. It is gratifying to have so much interest which generates numerous excellent articles.

6. Since assuming this job, I have asked to hear from you — the bad as well as the good. I am still on my "toot our own horn" crusade and, while I have had some excellent feedback, this has not yet translated into a lot of articles. I know these stories are out there! Let's hear from you.

7. The *Journal* does a great job of keeping its members advised of all the LSBA offers. The *Journal* regularly includes information about young lawyers, senior lawyers, Bar functions, CLE programs and activities of the Board of Governors and House of Delegates. I believe our *Journal* does as good of a job at this as any other magazine I have reviewed. It is very important to make our members aware of exactly what the Bar does; the Bar is here for you and we want to keep you informed.

8. I have become a better proofreader (although certainly not a perfect one). When I am told of an error in the *Journal* (see my Editor's Message in the December 2013/January 2014 *Journal*), it is my responsibility to remedy it. While seemingly often minor, I do review these with the Bar staff and the Editorial Board.

Sweating the details is a necessity.

9. I am always looking for new and innovative ideas for feature articles, section submissions, "The Last Word" or just a good story. If you have an idea on improving the *Journal*, let me hear from you.

10. (Finally!) I am truly honored to serve in this position. Sometimes it is a bit overwhelming and making some decisions can be a bit nerve-wracking but it is a true joy. I can't tell you enough that I am blessed to have such a hardworking Bar staff and Editorial Board. I have always believed that taking part in Bar activities is important and an instrumental part of our profession. Serving as editor is another wonderful opportunity to become involved and truly has given me a different perspective on how the Bar works.

Now onward to the end of year one!

Barry Grodsky

Letters to the Editor Policy

1. At the discretion of the Editorial Board (EB), letters to the editor are published in the *Louisiana Bar Journal*.

2. If there is any question about whether a particular letter to the editor should be published, the decision of the editor shall be final. If a letter questioning or criticizing Louisiana State Bar Association (LSBA) policies, rules or functions is received, the editor is encouraged to send a copy of that letter to the appropriate entity for reply within the production schedule of the *Louisiana Bar Journal*. If the editor deems it appropriate, replies may be printed with the original letter, or in a subsequent issue of the *Louisiana Bar Journal*.

3. Letters should be no longer than 200 words.

4. Letters should be typewritten, signed and, if applicable, include LSBA member number, address and phone number. Letters from non-members of the LSBA also will be considered for publication. Unsigned letters are not published.

5. Not more than three letters from any individual will be published within one year.

6. Letters also may be clarified or edited for grammar, punctuation and style by staff. In addition, the EB may edit letters based on space considerations and the number and nature of letters received on any single topic. Editors may limit the number of letters published on a single topic, choosing letters that provide differing perspectives. Authors, editorial staff or other LSBA representatives may respond to letters to clarify misinformation, provide related background or add another perspective.

7. Letters may pertain to recent articles, columns or other letters. Letters responding to a previously published letter should address the issues and not be a personal attack on the author.

8. No letter shall be published that contains defamatory or obscene material, violates the Rules of Professional Conduct or otherwise may subject the LSBA to civil or criminal liability.

9. No letter shall be published that contains a solicitation or advertisement for a commercial or business purpose.

Getting Up to Speed in the Digital World

By Richard K. Leefe

We are living in an era of technology that can pass us by if we do not give it the attention it deserves. For our younger lawyers — who have, quite likely, never experienced a rotary dial telephone, never entered a phone booth and put a coin in the pay slot, never cooked a meal without pressing buttons on a microwave oven, never typed documents on a manual or electric typewriter, never used carbon paper to make copies, never dealt with slick copies, and never driven to federal court to face the automatic rejection of pleadings you spent days typing because you did not comply with an obscure rule you never heard of — this new digital era is not a problem.

But, no matter how you look at it, all of us now live and practice law in this new digital world. It is time now to accept that technology is not going to stop and wait on law practitioners who may choose not to keep up with the advances.

The federal courts have gone to only-digital filing and the federal system no longer maintains paper copies of pleadings.

The Louisiana State Bar Association's (LSBA) Board of Governors decided to move forward with online-only voting, in effect now for the past two election cycles.

Another new online procedure is being launched this year. Members should be prepared for it. Payment of LSBA dues, payment of the Louisiana Attorney Disciplinary Board assessment and filing of the Attorney Registration Statement will be handled online. Members will soon receive a postcard with information on the process. Members will be able to make payments online with a credit card. Payments also will be accepted by ACH check.

This is the world we now live in and it is not going to turn back.

Recognizing that some LSBA members may not have Internet access or may not have the ability or desire to use a computer, the LSBA will allow (by specific request only) the option of using the old method of paper payment notices and form. The LSBA will absorb the cost of this method this year to allow members to meet their payment and filing obligations.

However, this may not last long.

For those who may not agree with these online procedures, be assured that the decision to move forward did not come without considerable thought and considerable discussion to offer a "window" for members to learn. One major factor in the decision to go digital is the savings it will bring in the cost of paper copies, stamps, envelopes, storage, etc.

Speed of communications and monetary savings have driven the move and it is here. The bimonthly "Bar Briefs" is now distributed online-only. Notices, alerts and other email from the LSBA are e-blasted via the Internet. Members who are not online may not get the notices and information needed in a timely manner.

The Bar leadership does agree that one LSBA member benefit should remain in the paper world — the bimonthly *Louisiana Bar Journal* will continue to be mailed to every member of the LSBA. But the online LSBA offerings are speeding ahead.

The LSBA is now on Facebook, Twitter, Pinterest, LinkedIn and Google+.

Fastcase, the online legal research service, is still offered free to LSBA members, offering a great economic advantage. (The LSBA pays the annual fee to Fastcase for the service to be offered at no charge to members.)

In increasing numbers, MCLE programs are being offered online, expanding the variety of subjects and allowing members to earn credits at their convenience on their own computers. Members are allowed up to four hours of electronically assisted CLE credit per year.

The LSBA's website (redesigned last year) is a treasure trove of news, notices, services and other information for every LSBA member. A review of the website's usage records indicates that the Member Directory is the most used page on the site.

Via that web page, members can search for other LSBA members and access contact information.

Also on the website, members can review the latest Bar news, access Fastcase, check on upcoming CLE programs, review the founding and controlling documents of the LSBA, read profiles on members of the Bar's leadership, check on Bar committees, learn of discounts on rental cars, hotels and other member vendor benefits, read previous issues of the *Louisiana Bar Journal* and "Bar Briefs," and on and on.

Members help pay for the services. Members should use them. The website is a wonderful tool and contains more information than one can imagine. Members with smart phones can access all of this, plus Fastcase, at their fingertips.

The leadership of the LSBA's Senior Lawyers Division is aware of the concerns of some older attorneys and has asked for help from the Young Lawyers Division in educating the older crowd to deal with these technologies. Taking advantage of this education will greatly benefit all senior lawyers and they are encouraged to attend the seminars proposed by the Senior Lawyers Division and learn. It will help in the long run.

Learning to use the Internet and email (I am showing my age by not naming more) can seem overwhelming to some, but it just starts with an effort to learn a few basics. More knowledge will come with practice. I believe members will find the experience invigorating and it will open a world far beyond expectations.

Get involved in the digital world. It offers access to worlds of information.

If you dig in your heels and refuse to begin the process of using online sources, you are doing yourself a great disservice. We have all heard numerous rationalizations of why some do not want to learn to use the digital/online world. For those who have learned and are using it, you know of what I speak. To those who haven't and will not learn, the world is going to leave you behind. Stay with us and practice law in this new and wonderful world of instant information and access. You will be better off for it.

Attorney Registration and Fee Payment Moving Online for FY 2014/2015

The Louisiana State Bar Association (LSBA) is pleased to announce that, effective with the 2014/2015 fiscal year, it will move to an Internet-based model for the collection of LSBA dues and Louisiana Attorney Disciplinary Board (LADB) assessments, as well as for filing the Attorney Registration Statement. This new collection method will allow payment of fees either by an ACH electronic check or credit card, enabling members to make filings 24/7, even when the Bar Center is closed or if mail service is disrupted due to inclement weather.

"This change will facilitate efficiencies related to online filing while still providing assistance and guidance from LSBA staff members," said LSBA President Richard K. Leefe. "This new system is another step forward in our ongoing efforts to utilize technology to create easier access for Louisiana lawyers."

Filing electronically should be a quick and simple process, utilizing the online member accounts that participants have relied on for years to register for CLE seminars and to access Fastcase. If an attorney has not yet set up a member account, one can easily be created at: *www.lsba.org/Members/memberaccts.aspx*. This webpage also allows members to edit their existing accounts and to reset a lost or forgotten account password.

After member data is confirmed but before the payment/filing process begins, members will be advised that they also need to go to *www.LADB.org* to complete the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form and will be asked to confirm that they understand this requirement.

The collection schedule will be the same as in prior years. An initial notice will be mailed in mid-May in the form of a 4x6 postcard, which will provide instructions to go online to *www.LSBA.org* to complete the registration process, and also go online to *www.LADB.org* to complete the Trust Account Form.

Once the Attorney Registration Statement has been electronically filed (including any necessary changes and/or updates) and payments have been made, an email confirmation will be sent. The filing and payment deadline will remain July 1. The LSBA will continue to mail delinquency and ineligibility notices to those who fail to meet the deadlines.

Members who elect to pay by electronic check will continue to pay the following fees:

► LSBA dues (practicing more than three years): $200;

► LSBA dues (practicing three years or less): $80;

► LADB assessment (practicing more than three years): $235; and

► LADB assessment (practicing three years or less): $170.

However, processing fees of 3% plus a .20 transaction fee will be passed along to those choosing to pay by credit card. Total amounts including credit card processing fees are as follows:

► LSBA dues (practicing more than three years): $206.20;

► LSBA dues (practicing three years or less): $82.60;

► LADB assessment (practicing more than three years): $242.25; and

► LADB assessment (practicing three years or less): $175.30.

Although the LSBA anticipates a smooth transition, Bar staff members will be available to answer questions and provide assistance to members. All questions and concerns should be directed to:

► Email — processing@LSBA.org

► Telephone — (504)566-1600 or (800)421-LSBA; ask for Payment Processing.

Social Media
An Effective Evidentiary Tool

By Pamela W. Carter and Shelley K. Napolitano

Only the foolish or uninitiated could believe that Facebook is an online lockbox for your secrets.

—Judge Richard Walsh[1]

The ability to use information discovered from social media sites as evidence in litigation has not yet been fully tested in courtrooms. In that vein, attorneys must understand the evidentiary and ethical implications of seeking and discovering such evidence. Attorneys, especially litigators, need to become acquainted with the potential usefulness of social networking sites, as well as the potential hazards and limitations that such use can sometimes bring. In order to best serve one's clients, it is vital to be up to date on the practical and legal aspects of researching, collecting and authenticating information taken from social media sites, as well as the admissibility of such information in court. Specifically, Facebook, MySpace, LinkedIn, Twitter, Instagram and other social networking websites are becoming increasingly useful in the legal world. In fact, 72 percent of online adults in the United States use these or other social networking websites.[2] Since the beginning of the social media era in 2005, social media usage has increased by 800 percent.[3]

Now, information that was once only known by close family and friends is broadcasted widely over the Internet, which means that attorneys have a readily accessible pool of evidence to consider in preparation for litigation.

Successfully utilizing social media evidence requires reevaluating both the way evidence is obtained and the hurdles that must be overcome in order to ensure the evidence is admissible.

Accessing the Evidence

All evidence, including that gleaned through social media networks, is subject to the rules of admissibility. However, the pliable nature of social media data allows for the constant manipulation of information. Thus, it is essential to keep authentication considerations in mind while collecting and producing this type of evidence.

How an attorney will go about accessing the information on a user's page will depend upon whether the information is public or private. If the user's page is visible to the public, an attorney or his agent can access the page and print or save the information freely.[4]

However, not all information on a social network user's page is publicly available; rather, the amount of available information depends upon a user's privacy settings. For example, Facebook offers various privacy settings that, depending upon a user's selection, can (1) hide an entire profile so that only the user's name and a profile picture are visible, (2) display the entire profile to all Facebook users, or (3) limit the display of information to only those that the user has accepted as "friends."

But even if the user's page is made private and thus unavailable to the public, the attorney may nonetheless still be able to gain access. During this discovery process, it is important to remain cognizant of the rules of professionalism. One method that has been sanctioned by some courts is for the attorney or the attorney's agent to request "friendship" with that user by using his real name.[5] In this way, the user can make an educated decision to share his personal information with the attorney or agent by accepting the friend request and thereby providing access to the user's information.[6] This method is not necessarily foolproof, though, as it may violate or at least implicate ABA Rule 4.2, the no-contact rule.

Another method is to request the information on the page during the discovery process. Courts are less likely to view social media discovery requests as unwarranted "fishing expeditions" if they are limited to dates relevant to the events at issue in the case (for example, in an employment discrimination case, the dates of employment) or specific topics (such as "all photos of plaintiff engaging in activities outside the home" or "all communications referencing defendant").[7] If the opposing party refuses, the seeking attorney should file a motion to compel for discovery of the social networking page and/or communications made through the site.[8] As long as the request is reasonably designed to lead to discoverable information and not overly broad in time or scope, the request is likely to be granted.[9] However, it should be noted that because social network discovery is relatively new, the outcome depends largely on the judge.

As parties become more aware of the possibility of social media discovery, some individuals may be tempted to delete their Facebook page or Twitter account in an effort to avoid being forced to hand over the content. But as social media evidence has become more commonplace, attorneys have begun issuing preservation letters at the onset of litigation in order to prevent such deletion or modification of networking sites. With the existence of a preservation letter, it is possible to obtain sanctions if the evidence suddenly disappears. Similarly, some attorneys have begun requesting that judges order the parties to sign a consent form that can be forwarded to the networking site with the subpoena.

Attorneys should be aware of the federal Stored Communications Act (SCA).[10] The SCA regulates the dissemination of electronically stored information in civil matters and provides a cause of action for damages against anyone who discloses electronic information without authorization. Courts have interpreted this legislation to allow social networking and other websites to decline to give stored information without consent when faced with a civil subpoena. Generally, social networking sites will provide basic user information in response to a valid subpoena, but will not provide posts or other communications. Thus, it is less burdensome to access user information from the user than from the website provider.

Few courts have addressed the relationship between the SCA and social networking user posts, but recently the U.S. District Court for New Jersey released an in-depth opinion on the topic. In *Ehling v. Monmouth-Ocean Hosp. Service Corp.*,[11] a hospital employee printed Facebook posts from co-employee Ehling's Facebook page and gave the printouts to the director of administration, leading to a disciplinary action against Ehling. Ehling alleged a violation of the SCA. The district court, following the lead of California's *Crispin*,[12] held that Facebook wall posts are protected by the SCA. However, the court also held that because the wall posts were accessed by Ehling's "friend" — someone given access to the information by the user — the posts fell under the SCA's "authorized user exception." However, it should be noted that the authorized user exception does not apply in cases where the purported authorization is obtained by coercion or under pressure.

Form of the Evidence

Once the attorney has gained access to the information and found something useful, the next step is to know how to get the data into physical form. Web information can be printed, screen captured, saved to a data storage device, or produced by a third party. However, courts also have accepted social networking information as evidence in other different forms. Since this area is relatively new, there is no one, single established best form. Printouts are still the most frequently used form, likely because it is the easiest and most inexpensive to obtain. There are advantages to each of the above forms, so the decision rests with the attorney.

Printouts of social networking information have been accepted by some courts as long as the information was obtained without deceit (*i.e.*, "friending" the plaintiff-user under a false identification).[13] Further, while some courts allow printouts of online information introduced by parties to the case,[14] others require more for authentication.[15] Other courts have allowed printouts but also have required either testimony in court[16] or an affidavit by the person who located and printed the information (be it the attorney, a paralegal or a party to the suit).[17] In one case, the court allowed into evidence a printout that contained the URL address and date after the court verified that the URL produced the same content as the printout. In another case, social networking evidence was admitted and a jury decided whether that evidence was credible.[18] Overall, the best offering of printout evidence seems to be the printout that shows the URL address and the date, which is then accompanied by a declaration of the witness who discovered and printed the evidence.[19]

Screen capturing is taking a snapshot of the entire computer screen, including the task bar, and printing the captured view.[20] This method has not been discussed at length in jurisprudence, but may be helpful because it verifies the URL address and the time and date located on the task bar. Although the admissibility of a screen capture was not at issue, a U.S. District Court considered screen captures of a Facebook page in ruling on a motion for summary judgment in *Tabani v. IMS Associates, Ltd*.[21]

Information saved to an electronic data storage device, such as a CD-ROM or USB drive, will typically contain more information than a mere printout. An electronic data storage device also will save metadata.[22] Metadata is information about the creation of the file that shows when the data was saved and if it has been modified.[23] This is helpful because it proves when the data was saved and that the electronic form is true to the original data.[24]

An attorney can make a request to a third party, such as the Internet Archive[25] or an employee of a social networking site. The Internet Archive service shows what a website looked like on a certain date. In *Telewizja Polska*, this service was used to show a business' website on different dates over a period of time.[26] Archive printouts and the affidavit of an Internet Archive employee were deemed sufficient to meet authentication.[27] However, a subsequent case[28] in a different federal district court required that an Archive employee have personal knowledge of the contents of the site to make a declaration supporting archival evidence. Additionally, a Facebook or MySpace employee may be able to verify information on the network. In *State of Louisiana v. Trevon Wiley*, the U.S. 5th Circuit accepted testimony from a MySpace manager verifying that certain information, such as user name, location and initial IP address, was correctly stored in the MySpace system.[29]

Social Media as An Impeachment Tool

Social media is a particularly helpful tool to impeach a witness. Evidence drawn from various websites can often expose the truth of a matter.

Facebook and Twitter allow users to make a status update and tweet, respectively. In a Pennsylvania state court case, a stock car driver filed a personal injury suit to recover damages resulting from being rear-ended during a cool down lap.[30] The plaintiff alleged permanent impairment, loss and impairment of general health, strength and vitality, and the inability to enjoy certain pleasures of life; however, the public portions of his Facebook profile showed comments made about a recent fishing trip. This information was used at the trial of the case.

The recent case of *Allied Concrete Co. v. Lester* demonstrates the importance of preserving social media evidence and the perils of advising clients involved in litigation to remove damaging posts from their social media pages.[31] Following a car accident involving an Allied Concrete truck, Lester sued Allied Concrete for compensatory damages for both his personal injuries and the wrongful death of his wife.[32] Allied Concrete sought discovery of Lester's Facebook page, which included photos of Lester holding a beer can while wearing a T-shirt printed with "I ♥ hot moms."[33] Lester's attorney, through his paralegal, promptly instructed Lester to "clean up" his Facebook page because "[we don't] want blow ups of other pics at trial." Lester then deleted a number of photos from his page.[34] Although the deleted photos were eventually produced and Lester ultimately prevailed at trial, the court ordered sanctions in the amount of $180,000 for Lester and $542,000 for his attorney. Also, Lester's attorney currently faces a disciplinary hearing related to his role in the cover-up. Just as you would not tell your client to shred relevant documents, Enron-style, it is also wise to advise your client not to get rid of social media posts.[35]

Admissibility of Social Media Evidence

While there are laws on the discovery of electronically stored information, no law has been created to separately address the admissibility of such information.[36] In order to fill this gap, courts have adapted the general admissibility rules to also cover the admission of electronically stored information. As a refresher, the admissibility of evidence centers around five tests: (1) relevance, (2) authentication, (3) hearsay, (4) original writing requirement, and (5) probative value outweighing prejudicial effect.

Determining whether evidence is relevant and passes the balancing test does not require a different analysis in the context of social media evidence. However, social media requires new considerations in the areas of authentication, hearsay and form.

Authenticating Evidence

The authentication standard for Louisiana courts and federal courts requires that evidence be "sufficient to support a finding that the matter in question is what its proponent claims."[37] Despite its seemingly simple wording, courts have struggled in consistently applying a uniform approach to this principle in the context of social media evidence. Some courts have taken an extreme view, opposing all Internet evidence as inherently unreliable.[38] Others have welcomed Internet printouts containing the URL address and date that can be verified by a "statement or affidavit from someone with knowledge."[39]

A recent decision of the U.S. 5th Circuit has addressed authentication of photographs uploaded to MySpace and Facebook. In *U.S. v. Winters*, the government relied on testimony from a witness that he discovered photographs on the defendant's MySpace and Facebook web pages and the defendant's admission that the web pages did belong to him.[40] However, the 5th Circuit determined on appeal that this was only enough to prove that the defendant displayed pictures of weapons, money and drugs, but not enough to prove that the defendant had actual possession of those items. The court noted that if the witness were able to testify that he had actually seen the defendant in possession of those items, then the pictures would have been properly authenticated.

Hearsay Rules

Evidence falling under the definition of hearsay[41] is inadmissible.[42] Generally, there are five questions that must be answered to determine whether evidence is admissible under the hearsay rules.

First, is the evidence a statement as defined by Rule 801(b)? Second, was the statement made by a "declarant," under Rule 801(b)? Third, is the statement of-

fered to prove the truth of the matter, as in Rule 801(c)? Fourth, is the statement excluded from the definition of hearsay in Rule 801(d)? Fifth, if the statement otherwise qualifies as hearsay, is it covered by one of the hearsay exceptions within Rules 803, 804 or 807?

Because hearsay is such a broad category, there are no general hearsay guidelines when it comes to electronically stored information. However, *Lorraine v. Markel Am. Ins. Co.* provides an incredibly thorough analysis of the various hearsay considerations in the context of electronically stored information and should be consulted for additional information.[43]

In order to qualify as a statement, there must be an assertion. One case held that the text and images that appeared on the defendant's web page did not qualify as a statement insofar as the text and images were asserted for the truth of the fact that they appeared on the website because, in effect, they were not asserting anything.[44]

Whether evidence is admissible depends largely on the purpose for which the statement is offered. For example, the U.S. 11th Circuit affirmed the admissibility of emails between a defendant and a third person when the emails were set forth to show that a series of communications between the two had taken place, and not that the statements made in the underlying conversations were true.[45]

Each hearsay exclusion and exception requires a different consideration. An admission of a party-opponent is one example of a hearsay exclusion and multiple courts have found that emails by a party-opponent qualify as such an admission. Along these lines, it is likely that evidence of a private message generated through a social networking site, if properly accessed, would similarly qualify as an admission of a party-opponent.[46] Additionally, the "present sense impression" exception may be a gold mine for attorneys because many social media users have constant access to their accounts on their cell phones. Many media sites display the time of day and allow the option of "checking-in," which pinpoints the location of a user at a particular time. These features allow attorneys to accurately determine whether a post, picture or other communication coincides with significant events at issue in the case.

Original Writing Requirement

Louisiana and federal courts require the original writing, recording or photograph "[t]o prove the content of a writing, recording, or photograph."[47] In an effort to make sense of quickly developing technologies, many courts consider a copy of the original as having the same force and effect as the original. Since a duplicate is any record created by means that accurately reproduces the original, it is not necessary to obtain an actual "original."[48]

Printouts can serve as an original document or the best evidence of computer-generated information, such as a website.[49] In fact, Federal Rule of Evidence article 1001 and Louisiana Code of Evidence article 1001 states that if "data [is] stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'" One court even deemed a printout of an instant messaging conversation that was copied into a blank document to meet the original writing requirement.[50]

Expectation of Privacy

Social networking has prompted courts and legal scholars to consider the constitutional implications of electronically stored information as evidence, particularly under the Fourth Amendment. The central question is whether social media users have a reasonable expectation of privacy with regard to information submitted to social media websites.

Although users are depositing information into a public forum, many find comfort in social networking privacy settings. As such, users have begun asserting an expectation of privacy when their communications are so limited on social networking sites. For instance, private messaging occurs between two or more users and the settings can be adjusted such that profile information can only be shared with a limited group of users.

The SCA may suggest that users do, in fact, have a reasonable expectation of privacy when using privacy settings. In *Ehling*, the court held that Facebook wall posts were protected by the SCA when the user allowed only "friends" to view her wall posts.[51] However, the caveat is that Internet service providers cannot disseminate this information to others under the SCA. But, of course, this does not prevent authorized users from sharing this information.

It is possible that, over time, American courts may become less likely to find a reasonable expectation of privacy outside of the narrow protections of the SCA, but currently courts exhibit diverging views on the matter.[52] Generally, people have a reasonable expectation of privacy in the contents of their home computers. But this expectation is not absolute, and may no longer exist when a computer user transmits data over the Internet.[53] In *U.S. v. Meregildo*, a witness did not have a legitimate expectation of privacy as to his Facebook status posts, which were disseminated to his "friends," because these authorized users were able to view and disseminate that information freely, including sharing it with the government.[54] Conversely, another federal court found that a student did have a reasonable expectation of privacy with regard to private information posts and private messages between users.[55]

Conclusion

Social media evidence deserves the same attention and prudence by courts and lawmakers as other, more traditional forms of evidence. As the use of social media rapidly increases, courts will no doubt produce a greater body of case law that will direct attorneys as how to best use this type of evidence in the course of the litigation. While some courts treat online information differently, many have been quick to apply the traditional rules of evidence, limit overbroad discovery requests, and require production of all relevant materials, regardless of the litigator's attempt to control access to those materials.

Keeping abreast of the developments and techniques in the admissibility of electronically stored information will make the savvy attorney ready for any evidentiary burden in the social networking era. It is certain that social media evidence has become an important part of modern litigation, and lawyers should be proactive in addressing the novelty of this evidence, its relevance and its potential prejudice. It is best to remember that a tweet today may be used as evidence tomorrow.

FOOTNOTES

1. Largent v. Reed, 2011 WL 5632688, at *10 (Pa. Ct. Com. Pl. 2011).

2. Joanna Brenner and Aaron Smith, Pew Internet, "72% of Online Adults are Social Networking Site Users" (2013), available at *http://pewinternet.org/Reports/2013/social-networking-sites/Findings.aspx*.

3. Steve Olenski, "Social Media Usage Up 800% For U.S. Online Adults In Just 8 Years," Forbes.com (Sept. 6, 2013), *http://www.forbes.com/sites/steveolenski/2013/09/06/social-media-usage-up-800-for-us-online-adults-in-just-8-years/*.

4. Moreno v. Hanford Sentinel, Inc., 91 Cal. Rptr. 3d 858 (Cal. Ct. App. 2009).

5. Jaclyn S. Millner and Gregory M. Duhl, "Social Networking and Workers' Compensation Law at the Crossroads," 31 Pace L. Rev. 1, 30 (2011).

6. Kathryn R. Brown, Note, "The Risks of Taking Facebook at Face Value: Why the Psychology of Social Networking Should Influence the Evidentiary Relevance of Facebook Photographs," 14 Vand. J. Ent. & Tech. L. 357, 381-82 (2012).

7. *See*, *e.g.,* Kear v. Kohl's Dep't Stores, Inc., 2013 WL 3088922, at *17-18 (D. Kan. 2013) (finding "Defendant has sufficiently limited the scope of this request by seeking limited access during the relevant time frame rather than seeking unfettered or unlimited access to Plaintiff's social media accounts") (citation omitted); EEOC v. Simply Storage Mgmt., L.L.C., 270 F.R.D. 430, 436 (S.D. Ind. 2010) (refusing access to entire account and instead ordering employees to produce postings that relate to "any emotion, feeling, or mental state").

8. Sam Glover, "Subpoena Facebook Information," Lawyerist.com, July 10, 2009 (explaining that Facebook requires a subpoena and additional user information to gain access to user content).

9. Ledbetter v. Wal-Mart Stores, Inc., 2009 WL 1067018, at *2 (D. Colo. 2009).

10. Stored Communications Act, 18 U.S.C. §§ 2701-2712 (2006).

11. Ehling v. Monmouth-Ocean Hosp. Serv. Corp., 11-CV-03305, 2013 WL 4436539 (D.N.J. Aug. 20, 2013).

12. Crispin v. Christian Audigier, Inc., 717 F. Supp. 2d 965, 976 (C.D. Cal. 2010).

13. The Ass'n of the Bar of the City of N.Y. Comm. on Prof'l Ethics, Formal Op. 2010-2 (2010), available at *http://www.nycbar.org/pdf/report/uploads/20071997-FormalOpinion2010-2.pdf* (discussing how to obtain evidence from social networking websites).

14. Perfect 10, Inc. v. Cybernet Ventures, Inc., 213 F.Supp.2d 1146 (C.D. Cal. 2002) (printouts are reasonably admissible because they show the dates and web addresses, are practical in form, and are supported by statements of the declaration of a party to the case); U.S. Equal Employment Opportunity Comm. v. E.I. DuPont de Nemours & Co., 2004 WL 2347559 (E.D. La. 2004) (allowing printout of a table on the U.S. Census Bureau's website); Jarritos, Inc. v. Los Jarritos, 2007 WL 1302506 (N.D. Cal. 2007), *rev'd and remanded sub nom.*, Jarritos, Inc. v. Reyes, 345 F. App'x. 215 (9 Cir. 2009) (website printout allowed when plaintiff's counsel made declaration that he typed in the URL address evident on the printout and then printed the site); Daimler-Benz Aktiengesellschaft v. Olson, 21 S.W.3d 707 (Tex. App. 2000) (admitting printouts when affiant gave personal knowledge that printouts were accurate copies of original); Jonathan L. Moore, "Time for an Upgrade: Amending the Federal Rules of Evidence to Address the Challenges of Electronically Stored Information in Civil Litigation," 50 Jurimetrics J. 147, 161 (2010) [hereinafter Moore].

15. In re Homestore.com, Inc. Sec. Litig., 347 F. Supp. 2d 769, 782-83 (C.D. Cal. 2004) (rejecting time stamp and URL on printout as sufficient authentication); Novak v. Tucows, Inc., 2007 WL 922306 (E.D.N.Y. 2007), *aff'd* 330 F. App'x. 204 (2 Cir. 2009) (excluding printouts of websites when declarant lacked personal knowledge to prove that website was what he claimed).

16. Saadi v. Maroun, 2009 WL 3736121 (M.D. Fla. 2009); TIP Systems, L.L.C. v. SBC Operations, Inc., 536 F. Supp. 2d 745 (S.D. Tex. 2008).

17. Kassouf v. White, 2000 WL 235770 (Ohio Ct. App. 2000).

18. U.S. v. Cole, 423 F. App'x 452 (5 Cir. 2011).

19. U.S. v. Standring, 04-CV-730, 2006 WL 689116, at *3 (S.D. Ohio 2006) (admitting printouts containing URL and date in conjunction with declaration by witness and excluding printouts without declaration).

20. Sue Chastain, "How to Capture a Screen Shot of your Desktop or the Active Window in Windows," About.com, *http://graphicssoft.about.com/cs/general/ht/winscreenshot.htm* (last visited Nov. 1, 2013).

21. Tabani v. IMS Associates, Ltd., 2013 WL 593140 (D. Nev. 2013).

22. See Moore, *supra* note 14.

23. *Id.*

24. *See* W. Lawrence Westcott II, "The Increasing Importance of Metadata in Electronic Discovery," 14 Rich J. L. & Tech. 10 (2008) (more information on metadata and its evidentiary use).

25. Internet Archive Wayback Machine, *http://archive.org/web/* (last visited Nov. 1, 2013).

26. Telewizja Polska USA, Inc. v. Echostar Satellite, 2004 WL 2367740 (N.D. Ill. 2004).

27. *Id.*

28. St. Luke's Cataract and Laser Institute, P.A. v. Sanderson, 2006 WL 1320242 (M.D. Fla. 2006).

29. State v. Wiley, 68 So.3d 583 (La. App. 5 Cir. 4/26/11).

30. McMillen v. Hummingbird Speedway, Inc., 2010 WL 4403285 (Pa. Ct. Com. Pl. Sept. 9, 2010).

31. 285 Va. 295 (Va. 2013).

32. *Id.* at 300-301.

33. *Id.* at 302.

34. *Id.* at 303.

35. Romano v. Steelcase, Inc., 907 N.Y.S. 2d 650, 652 (N.Y. Sup. Ct. 2010).

36. Jonathan L. Moore, "Time for an Upgrade: Amending the Federal Rules of Evidence to Address the Challenges of Electronically Stored Information in Civil Litigation," 50 Jurimetrics J. 147, 148 (2010).

37. Fed. R. Evid. art. 901 (West 2014); La. Code Evid. Ann. art. 901 (West 2014).

38. St. Clair v. Johnny's Oyster & Shrimp, Inc., 76 F.Supp.2d 773, 774 (S.D. Tex. 1999).

39. 34 A.L.R. 6th 253 (originally published in 2008); *see,* Nightlight Sys., Inc. v. Nitelites Franchise Sys., Inc., 2007 WL 4563875, at *6 (N.D. Ga. 2007); St. Luke's Cataract and Laser Institute, 2006 WL 1320242, at *2 (M.D. Fla. 2006).

40. United States v. Winters, 2013 WL 3089514 (5 Cir. 2013).

41. "Hearsay" is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered into evidence to prove the truth of the matter asserted. *See*, Fed. R. Evid. art. 801(c) (West 2014); *see also*, La. Code Evid. art 801(c) (West 2014).

42. Hearsay is not admissible except as otherwise provided. *See*, Fed. R. Evid. art. 802 (West 2014); *see also*, La. Code Evid. art. 802 (West 2014).

43. 241 F.R.D. 534, 562-63 (D. Md. 2007).

44. Perfect 10, Inc. v. Cybernet Ventures, Inc., 213 F. Supp. 2d 1146 (C.D. Cal. 2002).

45. United States v. Siddiqui, 235 F.3d 1318 (11 Cir. 2000).

46. *Id.*; *see also*, United States v. Safavian, 435 F. Supp. 2d 36 (D.D.C. 2006).

47. Fed. R. Evid. art.1002 (West 2014); La. Code Evid. art. 1002 (West 2014).

48. Patrick Marshall, "What You Say on Facebook May Be Used Against You in A Court of Family Law: Analysis of This New Form of Electronic Evidence and Why It Should Be on Every Matrimonial Attorney's Radar," 63 Ala. L. Rev. 1115, 1131 (2012).

49. Lorraine v. Markel American Ins. Co., 241 F.R.D. 534, 577-78 (D. Md. 2007).

50. Laughner v. State, 769 N.E.2d 1147 (Ind. Ct. App. 2002), *abrogated by* Fajardo v. State, 859 N.E.2d 1201 (Ind. 2007).

51. Ehling v. Monmouth-Ocean Hosp. Serv. Corp., 2013 WL 4436539 (D.N.J. 2013).

52. *See*, *e.g.*, United States v. Meregildo, 883 F. Supp. 2d 523, 525 (S.D.N.Y. 2012); United States v. Lifshitz, 369 F.3d 173, 190 (2 Cir. 2004).

53. *See* Lifshitz, 369 F.3d at 190; *see also*, Guest v. Leis, 255 F.3d 325, 333 (6 Cir. 2001).

54. United States v. Meregildo, 883 F. Supp. 2d 523, 525 (S.D.N.Y. 2012).

55. R.S. ex rel. S.S. v. Minnewaska Area Sch. Dist. No. 2149, 894 F. Supp. 2d 1128, 1142 (D. Minn. 2012).

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Evidentiary Implications of Social Media

An Examination of the Admissibility of Facebook, MySpace and Twitter Postings in Louisiana Courts

By Grant J. Guillot

The social networking revolution has forever altered the ease by which an attorney can obtain vital evidence that may be dispositive of the entire case before him. By March 2010, 450 million people had Facebook profiles and 27 million tweets were posted every 24 hours.[1] Given the ease of access social networking websites provide to an individual's personal information, photographs and videos, attorneys are using these websites to informally and inexpensively obtain evidence concerning jurors, potential witnesses and adverse parties.[2] Because social networking websites are broadly considered to be discoverable, most evidentiary disputes concerning social media content take place at the admissibility stage.[3] As demonstrated below, all five of the state appellate circuit courts have been required to determine the admissibility of social networking website content, an issue the courts will increasingly be forced to consider as the population of social media users continues to escalate.

1st Circuit

In *Boudwin v. General Ins. Co. of America*,[4] the Louisiana 1st Circuit Court of Appeal affirmed the jury award of damages issued to the plaintiffs, who were allegedly injured in an automobile accident but who posted incriminating photographs on their respective Facebook profiles. The plaintiffs appealed the jury award, contending the jury erred in failing to award them damages for past and future mental pain and suffering, physical disability or loss of enjoyment of life, and future medical expenses. At trial, one plaintiff was questioned regarding entries she made on her Facebook account, which revealed that she jogged regularly to stay in shape and engaged in the strenuous P90X exercise program. Another plaintiff was asked about his Facebook postings, which revealed that he frequently worked out, engaged in several sporting activities (sometimes multiple times in a single day), and participated in a softball tournament the month before trial. The 1st Circuit upheld the jury award, noting that "[t]he record clearly shows that neither [plaintiffs] have experienced any significant limitations or impairments as a result of the injuries they sustained in the . . . accident."[5]

On the other hand, in the companion cases of *State v. Robertson*[6] and *State v. Payton*,[7] the 1st Circuit affirmed the trial court's ruling declaring inadmissible a rape victim's blog, which was accessible through the victim's Facebook page. The defendants sought to admit the blog, which was entitled "I Was a Liar," as impeachment evidence to show the victim was a compulsive liar. In particular, the defendants suggested that the victim in her blog described her history as a child of lying compulsively and creating fictitious stories. The trial court found that while La. C.E. art. 608 allows a party to challenge the credibility of a witness as to her general reputation in the community, the victim's blog, in addition to being a fictional account, was a particular course of conduct. Thus, the 1st Circuit determined that the trial court did not abuse its discretion in ruling the blog inadmissible.

Nevertheless, in *State in Interest of B.S.*,[8] the 1st Circuit affirmed the lower court's admittance into evidence of a copy of the victim's Facebook postings, which "displayed a history of sexually explicit language and innuendoes."[9] The victim, a minor, alleged she was sexually assaulted by her stepmother's 16-year-old nephew, who was ultimately adjudicated a delinquent by the Juvenile Court for the 32nd Judicial District and committed to State custody for three years. In his appeal, the defendant contended the juvenile court judge erred in not giving due consideration to the victim's Facebook postings, which allegedly demonstrated the victim's propensity to lie. Indeed, during her cross-examination, the victim admitted that she lied about her age while using a Facebook account in order to obtain more friends. Regardless, the juvenile court judge stated that the evidence presented by the defendant did not persuade him to question the victim's credibility, and the 1st Circuit affirmed the juvenile court's ruling.

2nd Circuit

In *Janway v. Jones*,[10] the Louisiana 2nd Circuit Court of Appeal affirmed the 4th Judicial District Court's judgment denying a child's grandparents visitation rights because the evidence, which included an email sent via Facebook by the child's grandmother to the child's teacher in which the grandmother made derogatory statements about the child's father, demonstrated that visitation with the grandparents would not be in the child's best interests.

Likewise, in *Shipp v. Callahan*,[11] the 2nd Circuit affirmed the 1st Judicial District Court's granting of the plaintiff's petition for protection from abuse under the Domestic Abuse Assistance Law due in part to the defendant's salacious Facebook postings. At the hearing, the plaintiff offered into evidence a printout of the defendant's Facebook wall, which contained vulgar comments about the plaintiff written by the defendant, his grandmother and his cousin. The trial court found that the defendant

violated the Domestic Abuse Assistance Law as evidenced, among other things, by the defendant's offensive comments posted on his Facebook page.

Furthermore, in *Bowden v. Brown*,[12] the 2nd Circuit affirmed the ruling of the 26th Judicial District Court that modified the custody arrangement between the children's father and maternal grandmother. The father and mother of the children, along with the maternal grandmother, had originally filed a pleading requesting that custody be awarded to the grandmother subject to liberal visitation rights by the mother and father. One month later, the father filed a rule for contempt against the grandmother contending that she had refused to allow him to visit with the children and, thus, violated the visitation schedule. Two months after that, he filed a motion to modify custody in which he alleged significant changes in circumstances since the rendering of the original custody judgment. At the custody hearing, the father introduced into evidence incriminating postings taken from the grandmother's Facebook account, which demonstrated that nearly every person involved with the grandmother and the children was in an adulterous relationship. When the 2nd Circuit considered the Facebook postings along with the other evidence showing the grandmother had not provided a stable environment for the children, it determined the trial court committed no error and, thus, it affirmed the trial court's ruling.

3rd Circuit

The Louisiana 3rd Circuit Court of Appeal in *State v. Wood*[13] affirmed the decision of the 7th Judicial District Court, which determined there was no conspiracy between the defendant and his alleged co-conspirator based on a review of, among other things, the men's MySpace and Facebook accounts.

In addition, in *Preuett v. Preuett*,[14] the 3rd Circuit reversed the 35th Judicial District Court's judgment awarding a mother, the plaintiff, primary domiciliary custody of four of her six children, noting that Facebook messages sent by the children to their father, the defendant, demonstrated that the children were frightened due to the fighting

between the plaintiff and her new husband, the children's stepfather. The father had filed a rule for child support and to clarify a stipulated judgment for joint custody, urging that the original custody judgment caused a hardship between the parties because the mother moved to Oregon to reside with her new husband. The 3rd Circuit determined that the trial court erred in awarding the mother primary domiciliary custody because the father's reasons for inhibiting the mother's visitation rights, including his receipt of the Facebook messages from his children, were justified.

However, in *Mouton v. Old Republic Ins. Co.*,[15] the 3rd Circuit affirmed the ruling of the 15th Judicial District Court denying the defendants' request to admit into evidence the plaintiff's Facebook page. The defendants sought to introduce the Facebook page as impeachment evidence against the plaintiff, who alleged that he sustained injuries as a result of a vehicular accident caused by the defendants. The 3rd Circuit explained that the trial court has the discretion to determine whether to admit impeachment evidence and, thus, the 3rd Circuit found no reason to disturb that determination.

4th Circuit

In *Harris v. Department of Police*,[16] the Louisiana 4th Circuit Court of Appeal considered a case that centered on the use of social media. The defendant police department sent the plaintiff, a police officer, a disciplinary letter in which it alleged the plaintiff violated workplace rules pertaining to professionalism and social networking websites. The police department's accusations arose from the plaintiff's comments written on a fellow officer's Facebook page, upon which the plaintiff made sexual and derogatory comments about lesbians. Allegedly unbeknownst to the plaintiff, the fellow officer's original Facebook posting was referring to another fellow officer, an openly gay female. The female officer notified her supervisors of the Facebook comments and informed them that she was uncomfortable returning to work until the police department addressed the plaintiff's actions. The police department suspended the plaintiff without pay for four days. The plaintiff appealed to the Orleans Parish Civil Service Commission, which, after a disciplinary hearing, issued a decision denying the plaintiff's appeal. However, the 4th Circuit vacated the Commission's decision, finding that the police department violated the plaintiff's due process rights and its own internal rules by providing the plaintiff with notice of the disciplinary hearing on the day of the hearing. Nevertheless, the 4th Circuit noted that its decision did not preclude the police department and the Commission from reconsidering the matter after the plaintiff has been provided with meaningful notice and the opportunity to respond.

On Nov. 20, 2013, the 4th Circuit ren-

dered a decision in a criminal case, *State v. Dominick*,[17] wherein the Orleans Parish Criminal District Court allowed the defendant to proffer certain documents, including messages between the defendant and the victims taken from social media websites. The defendant sought to introduce the social media content into evidence in support of his motion to withdraw his guilty plea to multiple offenses, including forcible rape, second-degree kidnapping, stalking and extortion. The 4th Circuit affirmed the part of the trial court's holding that denied the defendant's motion to withdraw his guilty plea, noting that the defendant has no right to appeal on the merits of the case due to his entry of a guilty plea.

5th Circuit

In *State v. Wiley*,[18] the Louisiana 5th Circuit Court of Appeal affirmed the jury's verdict after hearing testimony regarding the co-defendants' MySpace pages, which proved that the co-defendants were all friends with each other. The jury found the defendant guilty as a principal to second-degree murder after the State presented evidence, including the MySpace pages, that demonstrated the co-defendants had a history of communicating with one another.

Furthermore, in *Hernandez v. Hernandez*,[19] the 5th Circuit affirmed the 40th Judicial District Court's order granting the plaintiff ex-husband's motion to decrease and modify child support, finding that the evidence presented by the plaintiff of the defendant ex-wife's income and employment, including pictures taken from her Facebook page depicting the activities of her personally-owned cake business, demonstrated a change in circumstances warranting a modification of the plaintiff's child support obligation.

Moreover, in *State v. Richoux*,[20] the 5th Circuit upheld the 24th Judicial District Court's ruling denying the defendant's motion for new trial based on newly discovered evidence — a witness's Facebook page — which the defendant alleged proved that the witness is an activist against sex offenders. The defendant, who was accused of aggravated rape, sexual battery of a victim under 13 years of age, and indecent behavior with a juvenile under 13 years of

age, argued that the content taken from the witness's Facebook page would have been critical in impeaching her testimony. The trial judge noted that the Facebook page was not newly discovered evidence because it pre-existed the trial and "was out there for everybody to see."[21] The judge also stated that the Facebook profile did not prove she was an activist against sex offenders before trial because her interest in sex offender cases may have been ignited by her participation in the case.

Conclusion

The use of social networking websites among the general population continues to increase, thus providing an attorney with a potential jackpot of personal information about jurors, witnesses and adverse parties. While social media content is widely considered discoverable by the courts, the admissibility of such content appears to turn on the same criteria courts consider when determining the admissibility of traditional forms of evidence. The cases above demonstrate that whether a court will find social media content to be relevant, competent, authentic and credible — and, therefore, admissible — is largely dependent upon the specific facts of each case. As more and more people place their lives on display for the world to see through their use of social media, the courts will increasingly be required to determine the admissibility of content extracted from social networking websites.

FOOTNOTES

1. Randy L. Dryer, "Advising Your Clients (and You!) in the New World of Social Media: What Every Lawyer Should Know About Twitter, Facebook, Youtube & Wikis," Utah B.J., May/June 2010, at 16, 20 (citation omitted).
2. Michelle D. Craig, "Did You Twitter My Facebook Wall? Social Networking, Privacy and Employment Law Issues," 58 La. B.J. 26, 28 (2010).
3. Kathryn R. Brown, "The Risks of Taking Facebook at Face Value: Why the Psychology of Social Networking Should Influence the Evidentiary Relevance of Facebook Photographs," 14 Vand. J. Ent. & Tech. L. 357, 378 (2012) (citation omitted).
4. 2011-0270, 2011 WL 4433578 (La. App. 1 Cir. 9/14/11).
5. *Id.* at *3.
6. 2012-0743, 2012 WL 6681830 (La. App. 1 Cir. 12/21/12).
7. 2012-0716, 2012 WL 6760055 (La. App. 1 Cir. 12/31/12).
8. 2012-0105, 2012 WL 3340701 (La. App. 1 Cir. 8/15/12).
9. *Id.* at *1.
10. 47,203 (La. App. 2 Cir. 3/30/12), 88 So.3d 713.
11. 47,928 (La. App. 2 Cir. 4/10/13), 113 So.3d 454.
12. 48,268 (La. App. 2 Cir. 5/15/13), 114 So.3d 1194.
13. 08-1511 (La. App. 3 Cir. 6/3/09), 11 So.3d 701.
14. 09-1489 (La. App. 3 Cir. 5/5/10), 38 So.3d 551.
15. 11-458 (La. App. 3 Cir. 10/5/11), 74 So.3d 1245.
16. 2012-0701, 2012 WL 4054872 (La. App. 4 Cir. 9/14/12).
17. 2013-0121, 2013 WL 6115141 (La. App. 4 Cir. 11/20/13).
18. 10-811 (La. App. 5 Cir. 4/26/11), 68 So.3d 583.
19. 11-526 (La. App. 5 Cir. 12/28/11), 83 So.3d 168.
20. 11-1112 (La. App. 5 Cir. 9/11/12), 101 So.3d 483.
21. *Id.* at 488.

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Creating Apps for the Legal Gap

By John Love Norris IV

Look around. The days of pen and paper are numbered. Law firms are going paperless. Information is stored in clouds. Receptionists are virtual. Attorneys have become dependent on technology to run their practices.

With technology putting pressure on both the old and new, a gap in the legal profession has formed — between those comfortable with using technology and those stuck in the "ancient" times of legal pads and filing cabinets.

Contrary to popular belief, this is not only impacting the older generation of attorneys. Reliance on technology has led to a tight squeeze in the job market for young attorneys. Law firms hand out fewer and fewer six-figure salaried positions each year, and entry-level positions of the past, such as contract or document review, are being outsourced or automated in an effort to cut costs.

Meanwhile, older attorneys are being forced to modernize their practices to complement their client's dependence on technology and social media. In addition to email, texting is quickly becoming a common form of attorney-client communication. Staying relevant now requires practitioners to maintain an online presence, such as posting blogs and actively participating in social media platforms, in addition to practicing law. Advertising budgets are now focused on pay-per-click campaigns through websites, such as FindLaw and Facebook.

Applications (or "apps") are useful tools necessary to close this gap. The surprising thing about apps is that everyone can possess the skills to create one.

What is An App?

An app (application) is a type of software that allows you to perform specific tasks. Apps come in many forms, such as word processors, web browsers and games. Apps are developed through a set of typed instructions known as software programming language.

Programming language is simply a combination of vocabulary and grammati-

cal rules that instruct a computer to perform specific tasks. Common forms of programming language are Javascript, Java and PHP.

An Old Dog Can Learn New Tricks

Anyone can learn a programming language. The Internet provides opportunities for individuals to learn computer programming, no matter their skill level. Websites such as CodeAcademy.com provide individuals with lessons to facilitate the learning of software coding. Students of the academy have the option to either take part in building a real project or select a specific web development language or library to learn.

Tips on Building an App

Be Creative.

An app can be demanding upon the developer and its success depends on his/her available time, programming skills and technological skills—resources which some attorneys may lack. However, lawyers have one quality that overshadows all the rest: an ability to create. The profession has long instilled upon lawyers the ability to think outside of the box. As an app developer, one must not only possess the quality of logic, but that of being artistic.

Be Simple.

An app does not have to reinvent the legal process. Simplicity will reduce the complexity of the build and, in turn, will reduce the complexity of using the app. Apps as simple as calculating the date and time have become popular with practitioners and judges in order to calculate procedural time delays.

Be Practical.

An app must be practical. Practitioners must be able to use it as a substitute to doing it the "old" way. Finding something practical may be found through observation and practice. Observe the legal process in local courtrooms instead of fiddling with phones. Explore ways to better inefficient processes. Apps that can calculate sentencing, judicial interest and child support will always be practical in the legal profession — if, for no other reason, than simplifying the math.

A Glance at the Future: Law Schools Teaching Software Coding

Loyola University College of Law explores the use of technology in the practice of law through its Litigation and Technology Section of the Stuart H. Smith Law Clinic and Center for Social Justice. In its second year, the clinic is one of only a few of its kind nationwide, requiring students to actively represent clients in courts while also designing and implementing technology-related projects aimed at assisting legal practitioners and increasing access to justice. The program is directed by Associate Clinical Professor R. Judson Mitchell.[1]

"The purpose of the Litigation and Technology Clinic is to provide students with hands-on litigation experience, while designing technical solutions to assist legal practitioners," Mitchell said. All apps created through the Clinic are free for practitioners and the public. The software code is open source and readily available for others to study and use on GitHub, the world's largest open source community. So far, the Litigation and Technology Clinic has released three apps (LaCrimBook, DocketMinder and Multiple Bill Calculator) and one search engine, Huey.

LaCrimBook

LaCrimBook is a web-based app that aims to replace West's big and expensive handbook of criminal law with a free digital alternative. The HTML5 application runs anywhere and works with or without an Internet connection. Further, LaCrimBook is set to automatically update any legislative changes to any criminal law — meaning attorneys can rest assured that LaCrimBook provides the latest edition of the Louisiana Criminal Code.

DocketMinder

DocketMinder is an app which helps individuals follow the latest minute entries on the Orleans Parish Criminal Court docket. After creating a free account, the app allows for users to select cases they are interested in. When the docket changes, an email is sent to the individual's specified email address. The app may be viewed on the individual's desktop computer, tablet or phone.

Multiple Bill Calculator

Multiple Bill Calculator is a web-based tool to help lawyers calculate minimum and maximum sentences under the Louisiana Habitual Offender Law. The calculator uses JavaScript to quickly calculate the minimum and maximum sentencing ranges for multiple offenders and can be used on any device with a browser, with or without Internet. Multiple Bill Calculator is the first tech project of the Clinic to be offered on iTunes.

Huey

Hueylaw.org was designed to provide a user-friendly search engine for those in need of Louisiana statutory laws. Users simply enter key search terms and the engine produces highlighted results. The search engine is an application program interface (API) available for software developers.

Conclusion

Unless something better replaces them, apps and other social media technologies will be part of an attorney's day-to-day practice for quite awhile. It's also a given that as more legal needs arise, more apps will be developed to handle those needs. Stay tuned!

FOOTNOTE

1. R. Judson Mitchell is an assistant clinical professor and pro bono coordinator/homeless advocacy director at Loyola University College of Law. His areas of legal experience are criminal defense, civil liberties and homelessness. He also is interested in the application of Internet technology to law practice, having written a number of software programs (*e.g.*, ClinicCases) for law school clinics and non-profit agencies.

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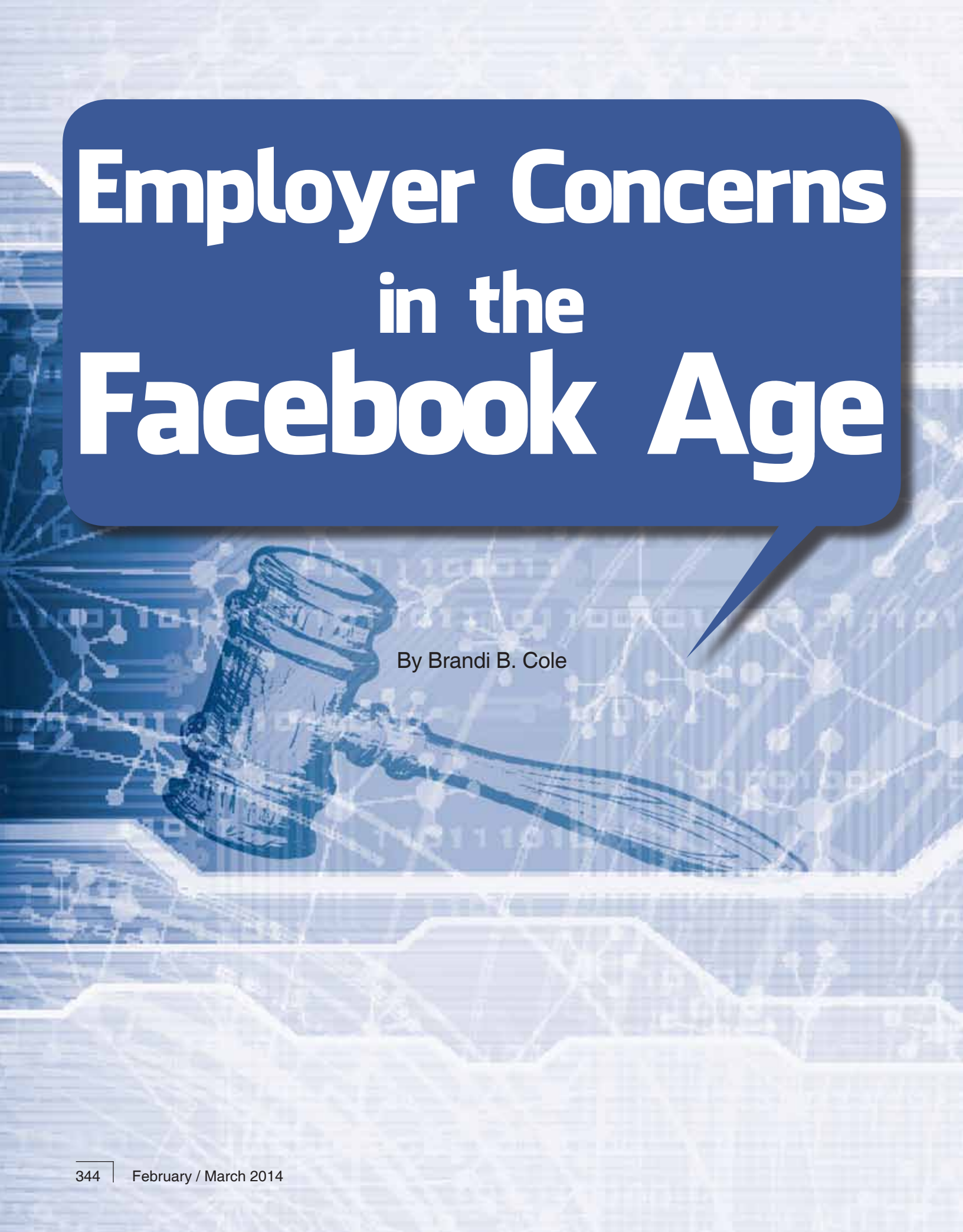
Employer Concerns in the Facebook Age

By Brandi B. Cole



Facebook continues to be the leader in social networking.[1] Facebook allows a user to post his every thought at the push of a button, whether it is a fiery status message about the ex, a to-the-minute update on life ("just took a shower, turned on the crockpot and walked the dog"), or the all-too-popular "I hate work" messages. Facebook certainly has some incredibly positive aspects. How else would every distant family member and friend keep up with my growing children? Nonetheless, many users do not consider the fact that the information they are posting may be viewed by the public, and even subject to privacy settings, by hundreds or thousands of "friends."

Most people have heard stories about employees facing termination for outrageous posts that make some ponder whether good sense has been replaced by 24/7 access to the Internet. In an occasion that can easily be found in a "fired for Facebook" Internet search, an employee conveniently forgot that she had befriended her manager on Facebook and posted the following on a status message for her network's viewing pleasure: "OMG I HATE MY JOB!! My boss is a total pervvy wanker always making me do sh** stuff . . . WANKER." Although this alone may draw a gasp, the subject manager's comment on the status is what really takes the cake: "Hi . . . i guess you forgot about adding me on here? Firstly, don't flatter yourself. Secondly, you've worked here 5 months and didn't work out that i'm gay? . . . Thirdly, that 'sh** stuff' is called your 'job,' you know what i pay you to do . . . . Don't bother coming in tomorrow . . . And yes, i'm serious."

Although this may be an extreme example, most Facebook users are all too familiar with those who openly complain about their jobs, their bosses or otherwise give too much information to their 4,500 friends. So where does the law intersect with social networking? If a client calls to tell you that an employee went on a tirade against the company, his boss and even bashed a customer or two for his entire social network to see, are there any legal issues you need to discuss before he tells this guy to hit the road? The answer is an absolute yes.

In the realm of labor and employment law, most people remember the basics — discrimination, harassment and retaliation. Unless a Facebook post is related to some allegation of discrimination or harassment, these categories of actionable claims will typically not come into play when an employee is complaining about work. However, an often forgotten protection, even for non-union employees, is set forth in Section 7 of the National Labor Relations Act (NLRA), which protects employees' right to engage in "concerted activities" for "mutual aid or protection." Section 8 of the NLRA prohibits employers from interfering with or restraining employees' rights under Section 7. Protected concerted activities include discussions between (or on behalf of) two or more employees about work-related issues, including pay, safety concerns or working conditions. An employee's activity may only be considered "concerted" if it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers Industries, Inc.*, 268 NLRB No. 73 (1984).

The National Labor Relations Board (NLRB) has held that activity must be both concerted and for mutual aid or protection (as opposed to an individual goal or benefit) to be protected. *See, e.g., Holling Press, Inc. and Boncraft-Holling Printing Group fka Boncraft, Inc.,* 343 NLRB No. 45, Case No. 3-CA-20229 (2004).

An employer commits an unfair labor practice if it interferes with, constrains or coerces an employee in the exercise of protected concerted activity. Although Section 7 was always important, if not often overlooked by non-unionized employers, it has taken on a whole new meaning in the electronic age. When an employee engages in a Facebook rant, whether during or after work time, an employer must ask whether the rant could be protected concerted activity, and whether it may face trouble for inhibiting that activity.

What is a Protected Posting?

As background, when an employee decides to complain about an unfair labor practice, such as being fired for a Facebook post, he first files a charge with a local division of the NLRB. If a regional director decides that the claim has merit, the director issues a complaint, and a NLRB administrative law judge (ALJ) issues a decision. This decision can be appealed to the NLRB in Washington, D.C., but if no exceptions are filed, the opinion becomes the order of the board. However, the ALJ's decisions are not binding legal precedent unless adopted by the board on a review of an exception.[2] In accordance with Section 10(e) of the NLRA, the decision of the board may then be appealed to the federal court of appeals of the petitioner's choosing.

ALJs have recently been flooded with social media cases and the NLRB's general counsel has issued reports regarding what social networking activity is considered protected activity under the NLRA. Generally, the NLRB views employees who use social media to communicate with family and friends about work issues as not protected under Section 7, nor is an employee who acts solely by himself and for himself, rather than calling for group action, protected by the NLRA. In other words, the above-referenced "pervvy wanker" status should not be protected by the NLRA. However, postings between co-workers or a post calling for commentary from co-workers regarding working conditions or some work-related issue will likely be protected. A few of the relevant cases are discussed below.

Triple Play Sports Bar, Case No. 34-CA-12915 (ALJ Jan. 3, 2012) is an example of one of the many cases decided by an ALJ pending before the board. In this case, the ALJ found that an employer unlawfully terminated employees for discussing the employer's alleged improper withholding of taxes on a Facebook status and related comments. Although some judges have disagreed, the ALJ found that one employee participated in the conversation by simply hitting the "Like" button. This Facebook conversation had been continued from some face-to-face discussions about the tax withholding

issue, and the ALJ found that the use of some expletives to describe the employer did not render the conduct unprotected.

The NLRB issued its first decision involving an employee fired over Facebook posts in September 2012. In *Karl Knauz Motors, Inc. and Robert Becker*, 13-CA-046452, 194 LRRM 1041 (9/28/12), the board affirmed an ALJ's opinion that an employee was lawfully fired over a Facebook post. A BMW salesman posted photos of, and sarcastic comments about, an accident at an adjacent employer-owned Land Rover dealership when another salesman allowed a 13-year-old boy to sit behind the wheel after a test drive. The boy hit the gas, drove over his dad's foot, over a wall and landed in a pond. The salesman also posted about a "luxury" event hosted by his employer, in which he mocked the menu of hot dogs, chips and water for the BMW dealership's most valued customers, and posted a photo of the hot dog cart. Eventually, other employees made sarcastic comments on these posts. Upon his employer's discovery of these posts and finding that the salesman showed no remorse for his actions, he was terminated. The NLRB agreed with the ALJ that the salesman was not improperly terminated. His posts about the accident at another car dealership were not protected activity, and the board adopted the factual finding of the ALJ that the salesman was terminated solely for that posting. Thus, the NLRB did not rule on whether the postings about the "hot dog" event would constitute protected activity.

The board issued its second decision regarding employees fired for Facebook in December 2012. In *Hispanics United of Buffalo*, 03-CA-27872, 359 NLRB No. 37 (Dec. 14, 2012), five claimants worked for a non-profit corporation that provided social services to the economically disadvantaged. A grant worker had criticized the work performance of these employees and threatened to address their deficiencies with the director of the company. One of the employees finally had enough and posted a status message after work hours (from home) complaining about the criticisms: "[Employee], a coworker feels that we don't help our clients enough at [Respondent]. I about

had it! My fellow coworkers how do u feel?" This led to a number of comments from the other four co-workers defending themselves and generally expressing disdain. When the employee claimed to their supervisor that she had been bullied, harassed and defamed, these employees were terminated. The NLRB had no problem finding that these communications were concerted for mutual aid and protection, and agreed with the ALJ's finding that the comments, although riddled with profanity and sarcasm, were not prohibited harassment or bullying. Because claimants were discharged solely for these postings, the discharges violated Section 8 of the NLRA.

On May 2, 2013, in *New York Party Shuttle, L.L.C.,* Case No. 02-CA-073340, the board found that New York Party Shuttle violated the NLRA when it discharged a tour guide after sending emails and posting complaints about the company in a tour guide group's site on Facebook. The board found that although claimant's communications were directed at employees of other tour guide companies and not his fellow employees, they were a continuation of union organization activities which his employer was aware he had been engaging in. Prior to sending the communications that resulted in his termination, the claimant had sent previous emails to the company's guides and other guides in New York City with concerns about the terms and conditions of his employment and discussing the benefits of unionization. In February 2012, in emails and postings to a NYC Tour Guides Facebook site which could be seen by invitation only, he referred to a former employer as "a worker's paradise" compared to New York Party Shuttle. He also noted that there was no union protection, no benefits and no vacation time, and worst of all, the company's paychecks sometimes bounced. The claimant also said in these communications that when he started agitating for a union, he stopped getting work, and he was planning to file an NLRB charge. The tour guide company admitted that the claimant was fired for the emails and postings, asserting that they were libelous communications. The NLRB judge rejected this argument, noting that while the communications were harsh, they were mostly true, down to the allegations of bounced checks. Reinstatement and back pay were ordered for the claimant.

When considering whether to take an adverse employment action against an employee, an employer should analyze the circumstances and whether the activity could be protected. Was the employee soliciting commentary or action from his co-workers or just friends and family? Is the posting part an ongoing work-related issue? Is or has the employee expressed interest in creating a union? An employer also must remember that the use of profanity and/or sarcasm will not necessarily take communications outside the realm of protection.

Social Media Policies and the NLRB

Employer social media policies have been another hot topic for the NLRB. With more than one billion users of social networking sites, many employers have standard social networking policies and/or other broad Internet policies. However, employers should be aware that standard language used in a number of policies has been struck down as chilling Section 7 rights.

In the NLRB's first social media decision, *Costco Wholesale Corp.,* Case No. 34-CA-012421, 93 LRRM 1241 (Sept. 7, 2012), the board found that a policy in an employee handbook violated Section 8(a)(1) where it prohibited electronic postings "that damage the Company, defame any individual or damage any person's reputation, or violate the policies outlined in the Costco Employee Agreement . . ." *Id.* at 1243. Reversing the ALJ's ruling,

the board found that an employee would find this broad prohibition to "clearly encompass concerted communications protesting the Respondent's treatment of its employees," and added that there was nothing in the policy suggesting that protected communications were excluded from the broad parameters of the rule. The board noted that unlike some other cases they had addressed, the policy was not accompanied by any language which would restrict its application to certain circumstances like sex or race-based harassment. *Id.* at 1244.

Also, in the Knauz case referenced above, the board again struck down a social media policy as violating Section 8(a)(1) of the NLRA. The courtesy rule in the handbook read as follows:

> (b) Courtesy: Courtesy is the responsibility of every employee. Everyone is expected to be courteous, polite and friendly to our customers, vendors and suppliers, as well as to their fellow employees. No one should be disrespectful or use profanity or any other language which injures the image or reputation of the Dealership.

Knauz BMW, 194 LRRM at 1042.

The NLRB had a problem with the second sentence. The board found the "courtesy" rule unlawful because employees could reasonably construe the prohibition against "disrespectful" conduct and "language which injures the image or reputation of the Dealership" to include Section 7 activity, *i.e.,* employees' protected statements to coworkers, supervisors, managers or third parties which object to working conditions and seek help in improving those conditions. The board took issue with the fact that the handbook contained no specific language informing employees that statements protected under Section 7 were not prohibited. Additionally, employees would reasonably assume that "statements of protest or criticism" were prohibited by the rule.

Along with various ALJ decisions striking down policies as chilling protected rights, general counsel for the NLRB issued Memorandum OM 12-59 on May 30, 2012, the board's third set of guidance for employers on this topic. In this memorandum, the board's general counsel found a number of the company's current policies to be unlawful, and advised that an employer cannot prohibit "inappropriate postings" or "inappropriate comments" if the terms are not defined by the policy. However, Wal-Mart, which adopted a revised policy after a claimant filed suit, apparently got it right. Although Wal-Mart's policy contained some broad language, the report noted that "it provides sufficient examples of prohibited conduct so that, in context, employees would not reasonably read the rules to prohibit Section 7 activity." For instance, part of the two-page policy forbids "inappropriate postings," including "discriminatory remarks, harassment, and threats of violence or similar inappropriate or unlawful conduct." Although the policy has a fair and courteous provision, it goes on to state that employees "are more likely" to resolve workplace disputes by using the company's open-door policy or speaking directly to co-workers rather "than by posting complaints to a social media outlet."

Conclusion

Although policies may appear vulnerable and subject to challenge by the NLRB, employers should adopt social media policies and enforce them consistently. Employers should avoid the use of ambiguous and overbroad language, and should instead adopt rules that restrict the scope of the policy and provide specific examples of prohibited conduct. An employer should not adopt a blanket rule in an attempt to control the tone or content of a communication, but an employer may prohibit statements that are harassing, discriminatory, false or defamatory, and can further prohibit the disclosure of confidential or proprietary information, within limits.[3] After the recent NLRB decisions, it is also a good practice to specifically set forth that Section 7 activity is not prohibited by the policy. Keep in mind, however, that ALJs have issued inconsistent decisions, and the federal appellate courts have not yet opined on the issue.

Two hot topics for the NLRB this year have been protected activity on Facebook and related sites and social media policies. Attorneys should stay informed of any decisions from the NLRB and, moreover, any decisions that go beyond the NLRB to federal court, which undoubtedly, a number of employers are awaiting.[4]

FOOTNOTES

1. Facebook has more than 650 million active users. *www.facebook.com.*

2. *www.nlrb.gov/cases-decisions/case-decisions/administrative-law-judge-decisions.*

3. In a recent NLRB decision involving Quicken Loans, Inc.'s policy for its mortgage bankers, the board struck down provisions on "confidential information" and a non-disparagement clause as being in violation of Section 7. Case No. 28-CA-075857 (June 21, 2013). The definition of "confidential information" included "all personnel lists, personal information of co-workers" . . . "personnel information such as home phone numbers, cell phone numbers, addresses and email addresses," which the board found would violate the employees' rights to communicate with each other about wages and other issues. The standard non-disparagement clause was struck down because "[w]ithin certain limits, employees are allowed to criticize their employer," and such a clause could be seen as prohibiting lawful conduct.

4. On Jan. 25, 2013, the D.C. Circuit issued a panel decision ruling that the NLRB was without authority to issue decisions because President Obama's "recess appointment" of three board members in January 2012 was unconstitutional. The board has issued about 200 decisions since that time, including the ones at issue in this article, but it is unclear at this time whether this decision will be reviewed by the full D.C. Circuit or the Supreme Court.

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2013 Secret Santa Project a Success! 692 Children Assisted

Art supplied by Secret Santa participants. *Photos by LSBA Staff.*

The Louisiana State Bar Association/ Louisiana Bar Foundation's Community Action Committee would like to thank all legal professionals who participated in the 2013 Secret Santa Project.

Because of the generous participants throughout the state — from "adopting" Santas and from monetary donations — 692 children, represented by 14 social service agencies in five Louisiana parishes, received gifts.

These children were represented by St. John the Baptist, Boys Hope Girls Hope, Southeast Advocates for Family Empowerment (SAFE), Jefferson Parish Head Start Program, Children's Special Health Services Region IX, Children's Bureau, CASA of Terrebonne, CASA of Lafourche, CASA of New Orleans, North Rampart Community Center, Metropolitan Center for Women and Children, St. Bernard Battered Women's Program, Gulf Coast Social Services and Methodist Children's Home of Greater New Orleans.

This was the 18th year for the Secret Santa Project. Several of the children send "thank you" cards and drawings to their "Santas." A few of those items are included here. Thank you!

La. Board of Legal Specialization Waives Application Fee for 2014

The Louisiana Board of Legal Specialization (LBLS) has announced that the application fee for 2014 applicants seeking certification will be waived. This translates to a $300 savings. The exam fee of $100 is payable with the application.

The LBLS is currently accepting requests for applications for 2014 certification in five areas — bankruptcy law (business and consumer), estate planning and administration, family law and tax law. The deadline to submit applications for consideration for estate planning and administration, family law and tax law certification is March 31, 2014. Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2014.

With the expanding complexity of the law, specialization has become a means of improving competence in the legal profession and thereby protecting the public. An increasing number of attorneys are choosing to be recognized as having special knowledge and experience by becoming certified specialists. As a matter of practical necessity, most lawyers specialize to some degree by limiting the range of matters they handle. Legal specialization helps the general public locate a lawyer who has demonstrated ability and experience in a certain field of law.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. The five-year practice requirement must be met for the period ending Dec. 31, 2014. Further requirements are that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought; passing a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought; and five favorable references. Peer review shall be used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field.

In addition to the above, applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered:

► Estate Planning and Administration Law — 18 hours of estate planning law.

► Family Law — 18 hours of family law.

► Tax Law — 20 hours of tax law.

► Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

Regarding applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the Louisiana Board of Legal Specialization simultaneously with the testing agency in order to avoid delay of board certification by the LBLS. Information concerning the American Board of Certification will be provided with the application form(s).

Anyone interested in applying for certification should contact LBLS Executive Director Barbara M. Shafranski, email barbara.shafranski@lsba.org or call (504)619-0128. For more information, go to the LBLS website at: *www.lascmcle.org/specialization*.

Attorneys Qualify as Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS), as approved by order of the Louisiana Supreme Court, the following members of the Bar have satisfactorily met the established criteria and are qualified as board-certified specialists in the following areas of law for a five-year period, which began Jan. 1, 2014, and will end on Dec. 31, 2018.

Newly Appointed Specialists

Estate Planning and Administration

Julie R. Johnson.....Hammond
Matthew A. Treuting .....New Orleans

Family Law

Gregory H. Batte ..... Shreveport
Bradford H. Felder .....Lafayette
Steven L. Prejean.....Baton Rouge

Tax Law

Jason J. Alley .....New Orleans
Cade R. Cole.....Lake Charles
Richard J. Roth III .....New Orleans
Ryan C. Toups.....New Orleans

Recertified Specialists

Business Bankruptcy Law

Ralph S. Bowie, Jr. ..... Shreveport
Rudy J. Cerone .....New Orleans
Bradley L. Drell..... Alexandria
Sessions Ault Hootsell III...New Orleans
Robert W. Raley.....Bossier City
Paul Douglas Stewart, Jr.....Baton Rouge
Stephen P. Strohschein .....Baton Rouge
Arthur A. Vingiello .....Baton Rouge
David F. Waguespack .....New Orleans

Consumer Bankruptcy Law

Ralph S. Bowie, Jr. ..... Shreveport
Raymond L. Landreneau, Jr. ..... Houma
David J. Williams .....Lake Charles

Estate Planning and Administration

Byron Ann Cook.....New Orleans
James G. Dalferes..... Harahan
Mary Lintot Dougherty .....Houston, TX
Miriam Wogan Henry.....New Orleans
Jimmy D. Long, Jr. .....Natchitoches
Christine W. Marks..... Metairie
Kyle Christopher McInnis..... Shreveport
Leon Hirsch Rittenberg III.....New Orleans
Cherish Dawn van Mullem.....Baton Rouge
Todd M. Villarrubia .....New Orleans
H. Aubrey White III.....Lake Charles

Continued next page

LBLS continued from page 349

Family Law

Terry G. Aubin.....Alexandria
Suzanne Ecuyer Bayle.....New Orleans
H. Craig Cabral.....Metairie
Michael D. Conroy.....Covington
Kenneth P. Haines.....Shreveport
Margaret H. Kern.....Covington
Charles O. LaCroix.....Alexandria
Susan H. Neathamer.....Gretna
Vincent A. Saffiotti.....Baton Rouge
Laurel A. Salley.....Metairie
Lila Molaison Samuel.....Gretna
Sandra Lynn Walker.....Shreveport

Tax Law

Byron Ann Cook.....New Orleans
Kyle Christopher McInnis.....Shreveport
Robert Frederick Mulhearn, Jr.....Baton Rouge
Leon Hirsch Rittenberg III.....New Orleans
John Kevin Stelly.....Lafayette
John R. Williams.....Shreveport

The LBLS is currently accepting applications for Jan. 1, 2015, certification. To receive an application, contact LBLS Executive Director Barbara M. Shafranski at (504)619-0128 or email barbara.shafranski@lsba.org. For more information, go to the LBLS website at: *www.lascmcle.org/specialization*.

Louisiana State Bar Association (LSBA) President Richard K. Leefe and his wife Barat (front row center) led a group of LSBA members and their families on the CLE Danube River Cruise this past December. Through Vacations At Sea Travel, the LSBA program was Dec. 8-15 aboard the Viking Longship Skadi. The eight-day itinerary cruised through Austria, Germany, Hungary and Slovakia. The group took time for a photo in Budapest. The LSBA is currently organizing another CLE opportunity in the French wine country. More information below.

LSBA Pairing CLE Program with French Châteaux, Rivers & Wine Cruise

The Louisiana State Bar Association (LSBA) is offering an exciting CLE opportunity while cruising through the French wine country. Partnering with Vacations At Sea Travel, the LSBA program will be Saturday, Nov. 22 through Saturday, Nov. 29, aboard the Viking Longship Forseti.

Celebrate *joie de vivre* in this land of wine and oysters, truffles and cognac, as you cruise the Dordogne, Garonne and Gironde Rivers. The vineyards that cover the rolling hills along the rivers of Aquitaine have for centuries produced France's most remarkable wines. At the region's heart, the city of Bordeaux stretches along the river bank, inviting visitors to savor its grand architecture, tempting cafés and superb museums.

Special LSBA pricing, available only through Vacations At Sea, represents a savings of $125 per person off of the lowest available rates. (This CLE program is being offered at no cost to the LSBA; all costs will be covered by those who choose to participate.) More information on the CLE programming will be provided once the schedule is finalized.

Space is extremely limited and cruise categories may sell out. A deposit of $500 per person, plus the passport names and dates of birth of all passengers, are required to hold a cabin. Final payments must be paid by **June 20, 2014**.

Travel insurance is available through the cruise line or an independent company. Viking also offers airfare and transfers, and pre- and post-cruise hotel stays. For more information or to book, contact Jill Wall at (504)482-1572, (800)749-4950, or email jwall@seavacations.com.

To review more information on pricing, go to: *www.lsba.org*.

To review more information on the cruise itinerary, go to: *www.vikingrivercruises.com/rivercruises/europe-france-bordeaux-2014/itinerary.aspx*.

Committee Preferences: Get Involved in Your Bar!

Committee assignment requests are now being accepted for the 2014-15 Bar year. Louisiana State Bar Association (LSBA) President-Elect Joseph L. (Larry) Shea, Jr. will make all committee appointments. Widespread participation is encouraged in all Bar programs and activities. Appointments to committees are not guaranteed, but every effort will be made to accommodate members' interests. When making selections, members should consider the time commitment associated with committee assignments and their availability to participate. Also, members are asked to list experience relevant to service on the chosen committees. The deadline for committee assignment requests is Tuesday, April 15. The current committees are listed below.

Access to Justice Committee
The committee works to assure that every Louisiana citizen has access to competent civil legal representation by promoting and supporting a broad-based and effective justice community through collaboration between the Louisiana State Bar Association, the Louisiana Bar Foundation, Louisiana law schools, private practitioners, local bar associations, pro bono programs and legal aid providers.

Access to Justice Policy Committee
The committee works to assure continuity of policy, purpose and programming in the collaboration between the private bar and the civil justice community so as to further the goal of assuring that Louisianians, regardless of their economic circumstance, have access to equal justice under the law.

Committee on Alcohol and Drug Abuse
The committee protects the public by assisting, on a confidential basis, lawyers and judges who have alcohol, drug, gambling and other addictions. The committee works with the Lawyers Assistance Program, Inc. to counsel, conduct interventions and locate treatment facilities for impaired lawyers, and to monitor recovering attorneys and attorneys referred by the Louisiana Attorney Disciplinary Board or Office of Disciplinary Counsel.

Bar Governance Committee
The committee ensures effective and equitable governance of the association by conducting an ongoing evaluation of relevant procedures and making recommendations to the House of Delegates regarding warranted amendments to the association's Articles of Incorporation and/or Bylaws.

Children's Law Committee
The committee provides a forum for attorneys and judges working with children to promote improvements and changes in the legal system to benefit children, parents and the professionals who serve these families.

Client Assistance Fund Committee
The committee protects the public and maintains the integrity of the legal profession by reimbursing, to the extent deemed appropriate, losses caused by the dishonest conduct of any licensed Louisiana lawyer practicing in the state.

Community Action Committee
The committee serves as a catalyst statewide for lawyer community involvement through charitable and other public service projects.

Continuing Legal Education Program Committee
The committee fulfills the Louisiana Supreme Court mandate of making quality and diverse continuing legal education opportunities available at an affordable price to LSBA members.

Criminal Justice Committee
The committee develops programs and methods which allow the Bar to work with the courts, other branches of government and the public to ensure that the constitutionally mandated right to counsel is afforded to all who appear before the courts.

Crystal Gavel Awards Committee
The committee solicits and reviews nominations for the Crystal Gavel Awards and offers recommendations of recipients.

Diversity Committee
The committee assesses the level of racial, ethnic, national origin, religion, gender, age, sexual orientation and disability diversity within all components of the legal profession in Louisiana, identifies barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse backgrounds, and proposes programs and methods to effectively remove barriers and achieve greater diversity.

Group Insurance Committee
The committee ensures the most favorable rates and benefits for LSBA members and their employees and dependents for Bar-endorsed health, life and disability insurance programs.

Lawyers in Transition Committee
The committee studies rules and practices regarding curatorships of lawyers' practices; studies methods for preserving the practice of lawyers and protecting clients for lawyers unable to temporarily practice, either voluntarily or involuntarily, as a result of disability due to health, or arising out of the disciplinary process; studies voluntary methods of designating a successor or other transitioning process for a lawyer's practice in advance of any disability or death; and provides a method of involuntary intervention for lawyers suffering a severe age-related impairment to protect the clients and to deliver assistance to the age-impaired attorney.

Continued next page

Committees continued from 351

Legal Malpractice Insurance Committee

The committee ensures the most favorable rates, coverage and service for Louisiana lawyers insured under the Bar-endorsed legal malpractice plan by overseeing the relationship between the LSBA, its carrier and its third-party administrator, and considers on an ongoing basis the feasibility and advisability of forming a captive malpractice carrier.

Legal Services for Persons with Disabilities Committee

The committee provides members of the bench, Bar and general public with a greater understanding of the legal needs and rights of persons with disabilities, and helps persons with disabilities meet their legal needs and understand their rights and resources.

Legislation Committee

The committee informs the membership of legislation or proposed legislation of interest to the legal profession; assists the state Legislature by providing information on substantive and procedural developments in the law; disseminates information to the membership; identifies resources available to the Legislature; provides other appropriate non-partisan assistance; and advocates for the legal profession and the public on issues affecting the profession, the administration of justice and the delivery of legal services.

Medical/Legal Interprofessional Committee

The committee works with the joint committee of the Louisiana State Medical Society to promote collegiality between members of the legal and medical professions by receiving and making recommendations on complaints relative to physician/lawyer relationships and/or problems.

Practice Assistance and Improvement Committee

The committee serves the Bar and the public in furtherance of the association's goals of prevention and correction of lawyer misconduct and assistance to victims of lawyer misconduct by evaluating, developing and providing effective alternatives to discipline programs for minor offenses, educational and practice assistance programs, and programs to resolve minor complaints and lawyer/client disputes.

Committee on the Profession

The committee encourages lawyers to exercise the highest standards of integrity, ethics and professionalism in their conduct; examines systemic issues in the legal system arising out of the lawyer's relationship and duties to his/her clients, other lawyers, the courts, the judicial system and the public good; provides the impetus and means to positively impact those relationships and duties; improves access to the legal system; and improves the quality of life and work/life balance for lawyers.

Public Access and Consumer Protection Committee

The committee protects the public from incompetent or fraudulent activities by those who are unauthorized to practice law or who are otherwise misleading those in need of legal services.

Public Information Committee

The committee promotes a better understanding of the law, legal profession, individual lawyers and the LSBA through a variety of public outreach efforts.

Rules of Professional Conduct Committee

The committee monitors and evaluates developments in legal ethics and, when appropriate, recommends changes to the Louisiana Rules of Professional Conduct; acts as liaison to the Louisiana Supreme Court on matters concerning the Rules of Professional Conduct; reviews issues of legal ethics and makes recommendations to the LSBA House of Delegates regarding modifications to the existing ethical rules; oversees the work of the Ethics Advisory Service and its Advertising Committee, Publications Subcommittee and other subcommittees; and promotes the highest professional standards of ethics in the practice of law.

Louisiana State Bar Association 2014-15 Committee Preference Form

Indicate below your committee preference(s). If you are interested in more than one committee, list in 1-2-3 preference order. On this form or on a separate sheet, list experience relevant to service on your chosen committee(s).

Print or Type

____ Access to Justice
____ Access to Justice Policy
____ Alcohol and Drug Abuse
____ Bar Governance
____ Children's Law
____ Client Assistance Fund
____ Community Action
____ Continuing Legal Education Program
____ Criminal Justice
____ Crystal Gavel Awards
____ Diversity
____ Group Insurance
____ Lawyers in Transition
____ Legal Malpractice Insurance
____ Legal Services for Persons with Disabilities
____ Legislation
____ Medical/Legal Interprofessional
____ Practice Assistance and Improvement
____ Committee on the Profession
____ Public Access and Consumer Protection
____ Public Information
____ Rules of Professional Conduct

Response Deadline: April 15, 2014

Mail, email or fax your completed form to:

Christine A. Richard, Program Coordinator/Marketing & Sections
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, LA 70130-3404
Fax (504)566-0930
Email: crichard@lsba.org

LSBA Bar Roll Number _____
Name _____
Address _____
City/State/Zip _____
Telephone _____
Fax _____
Email Address _____
List (on a separate sheet) experience relevant to service on the chosen committee(s).

Four Legal Professionals Recognized with Crystal Gavel Awards

Four Louisiana State Bar Association (LSBA) members received 2013-14 Crystal Gavel Awards. The awards recognize outstanding lawyers and judges who have been unsung heroes/heroines in their communities, who have performed community service out of a sense of duty, responsibility and professionalism, and who have made a difference in their local communities, in local organizations and even in the life of one person.

Award recipients are **Hon. Sheva M. Sims**, Shreveport**; Jeffrey K. Coreil**, Lafayette; **Dana M. Douglas**, New Orleans; and **Gwendolyn P. Harmon**, Baton Rouge.

Hon. Sheva M. Sims

Hon. Sheva M. Sims, who presides over Division D of Shreveport City Court, was recognized for her outstanding efforts assisting many groups on a volunteer basis. She earned her law degree from Southern University Law Center.

As a past board president for the YWCA of Northwest Louisiana, Judge Sims worked to build the organization after several grants expired. She personally called key supporters to keep the doors open and the employees' salaries paid. She also has spent many hours assisting women in domestic violence situations.

She supports various HIV/AIDS organizations. She has donated to (or organized donations for) clients in need at the Philadelphia Center. As a board member of Louisiana AIDS Advocacy Network, she travels the state to gather information concerning HIV/AIDS for the Philadelphia Center and other north Louisiana HIV/AIDS organizations.

Judge Sims also tutors children in math, volunteering her services to the students at the Shreveport Job Corps Center. She has contributed funds to high school graduates entering college to help in the purchase of books and supplies. She also has bought computers to enable students to do research and complete assignments.

She educates the citizens of Shreveport with monthly "Know Your Rights" seminars. This forum educates the public about their rights and provides pragmatic etiquette tips on how to respond to officers in police stops and the proper manners when brought before the court.

"Judge Sims has made significant long-term contributions in volunteerism in north Louisiana and the state as a whole," said Deborah Allen, one of seven individuals who nominated Judge Sims for the award. "I am proud to be able to nominate one of this state's most civic-minded judges, who understands what civic duty is and tirelessly reaches across this city and state to those in need."

Jeffrey K. Coreil

Jeffrey K. Coreil, an associate in the Lafayette office of NeunerPate, was recognized for his commitment to providing pro bono legal services in his community and for promoting professionalism within the local bar.

Coreil, a graduate of Louisiana State University Paul M. Hebert Law Center, is actively involved in the pro bono programs facilitated by Lafayette Volunteer Lawyers (LVL) — the H.E.L.P. (Homeless Experience Legal Protection) Program and the Protective Order Panel. He accepted three LVL pro bono cases in 2011 and two pro bono cases in 2012, assisting low-income families with domestic and family law issues. He is an active member of the LVL Protective Order Panel and assisted 11 domestic violence victims with Title 46 protective order petitions in 2011 and 17 domestic violence victims in 2012. Working with the H.E.L.P. program — which assists homeless individuals in obtaining certified copies of their birth certificates — he assisted six participants in 2011. Since beginning his practice, he has contributed more than 275 hours of legal work to the impoverished citizens of Lafayette.

In 2011 and 2012, he participated in the LSBA's Law School Professionalism Orientation at LSU Law Center, speaking to first-year law students on the importance of maintaining ethics and professionalism in practice.

In 2011, Coreil chaired the Lafayette Young Lawyers Association's (LYLA) Social Committee, organizing events for the judiciary, the Lafayette Bar and the LYLA. He currently serves as chair of LYLA's newly created CLE Committee.

"Motivated by generosity and compassion and leading by example, Jeffrey challenges his colleagues to donate their time and expertise to help those in need in the Lafayette area," said Susan Holliday, former executive director of the Lafayette Parish Bar Association.

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Lawyers Give Back

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Dana M. Douglas

Dana M. Douglas, a shareholder in the New Orleans office of Liskow & Lewis, A.P.L.C., was recognized for her outstanding work and efforts in assisting Exodus Place Community Center and other groups.

Douglas, a graduate of Loyola University College of Law, has been instrumental in the success and viability of Exodus Place, which focuses on the needs of at-risk youth and young adults in Central City New Orleans. She is a member of the center's board of directors. Exodus Place provides vocational training, job placement, affordable housing, pairing with other resources such as literacy and early childhood education, and recreational activities for neighborhood children. She coordinated a legal fair at the center to address residents' needs in the areas of blight, succession, family law and criminal law.

She was a member of the Louisiana State Law Institute, a volunteer judge for the Orleans Parish Juvenile Court Teen Court Program and a board member for the New Orleans Children's Bureau. She also served as a board member for St. Andrew's Village, a faith-based, mixed-use village community where adults with developmental disabilities and non-disabled individuals can live, work, worship and socialize.

In 2008, Douglas became the guardian to her minor cousin, who by age 15 had lost her mother and grandparents who had previously served as her guardians. Her cousin now attends Johnson & Wales University in Providence, RI, on full scholarship.

"Dana quietly but continuously serves her community and its citizens," said Candice McMillian, owner of Exodus Place. "Dana . . . will never 'toot her own horn,' but her good works speak for themselves."

Gwendolyn P. Harmon

Gwendolyn P. Harmon, an attorney in the Baton Rouge office of Phelps Dunbar, L.L.P., was recognized for her volunteer efforts with Canine Companions for Independence (CCI). She earned her law degree from Louisiana State University Paul M. Hebert Law Center.

In 2002, Harmon and her husband began their commitment to serve as puppy raisers for CCI, a non-profit organization that places assistance dogs free of charge with adults and children with disabilities (including assistance dogs, skilled companions, hearing dogs and facility dogs). They are currently raising their fifth puppy for CCI, a lab/golden retriever mix named Tater.

As volunteer CCI puppy raisers, the Harmons are responsible for all the puppy's needs during the year and a half the puppy resides with them. She sends monthly progress reports on the puppy and attends obedience training with the puppy at least twice a month. When the puppy is about 18 months old, and evaluated as ready to begin advanced training, the puppy is taken to the CCI Southeast Region Campus in Orlando and professional trainers begin specific skills training. There are also 12 basic training programs in prisons across the country, and Harmon is credited with being instrumental in getting Dixon Correctional Institute involved in the puppy program.

"Gwen is an outstanding volunteer and a stellar example of the caliber of attorneys in Louisiana as she balances a demanding practice while striving to help others," said Ann K. Gregorie, executive director of the Baton Rouge Bar Association.

LAWYERS Assistance

By J.E. (Buddy) Stockwell

REACH OUT IN CONFIDENCE

The Lawyers Assistance Program, Inc. (LAP) provides free and confidential life-saving assistance to the profession and it helps those who are suffering due to substance abuse, depression or any other mental health issue. Pursuant to La. R.S. 37:221 and Supreme Court Rule XIX(16)(J), a person who contacts LAP or a member of the Louisiana State Bar Association's voluntary Committee on Alcohol and Drug Abuse for assistance does so confidentially as a matter of law. Confidentiality can only be waived by the person who has contacted LAP.

The most coveted success stories among LAP participants involve lawyers and judges who reached out to LAP early on. They are fortunate because they decided to take advantage of LAP's confidential assistance *before* their mental health condition progressed to the point that it caused them to exhibit potentially unethical conduct. A DWI or drug arrest, complaints by clients, or concerns by the judiciary and peers all mark the potential for both serious personal problems and significant professional problems.

Once a person's mental health problems have progressed to the point that impairment-related complaints of unethical conduct have occurred and/or an arrest has occurred, it often becomes known to the person's employer. It also may become known to the Office of Disciplinary Counsel (ODC) and spark a formal investigation by the ODC. A lawyer's employment and/or law license can be placed at risk by allegations of impairment-related unethical conduct.

By reaching out to LAP early on, however, impaired individuals can sometimes successfully obtain help and effective treatment for their condition *before* their disease has progressed and their behavior has deteriorated to the point that they are facing severe professional consequences.

These remarks, from a proactive LAP participant who avoided any professional issues whatsoever, fairly summarize the miracle of confidential LAP assistance (published with permission of the undisclosed participant):

Since that first day I reached out to the LAP, many miracles have taken place. My family is proud of me and I now enjoy being there for them in a loving, healthy, sober manner. I am also a very productive attorney who serves clients well. My future is bright again. I will always remain a supporter and friend of the LAP. Thank you LAP for helping save my life.

As was the case with the person above, a significant percentage of LAP's services are rendered in total privacy to people who have never been in any professional trouble whatsoever. In fact, in 2013, 40 percent of the people coming to LAP did so proactively and independently.

LAP's 2014 theme — ***Reach Out!*** — seeks to raise the legal profession's awareness of LAP's confidential assistance to lawyers, judges, law firms, law students and all family members of those licensed to practice law in Louisiana. At LAP, we are determined to continually improve the percentage of LAP cases wherein the person obtains effective LAP assistance *before* unethical conduct occurs and potentially harms the person, the profession and the public. In cases involving early, successful LAP participation, damage is often averted or significantly attenuated and the person, the person's family and employer, the profession and the public all benefit greatly.

Of course, denial is an extremely powerful component of diseases such as alcoholism and addiction. Many people simply cannot admit to a problem and won't reach out for help until a crisis is reached. For many, their past impairment-related misconduct has already landed them, or will likely land them, in serious hot water with their clients, their law firm, the ODC or, sometimes, all of the above.

For these people, a formal LAP Recovery Agreement can often be invaluable if they are in the position of needing, or anticipating needing, to objectively demonstrate to their employers or the ODC that they have successfully followed LAP's recommendations for assessment and treatment, and have established continuous, sustained recovery under formal LAP monitoring.

While the primary mission at LAP is to help legal professionals restore their mental health and help save their lives in every case, regardless of whether the person has run afoul of the disciplinary system or suffered professional consequences, it is nonetheless still very important to routinely remind the profession that many LAP cases do not involve employers or the ODC. A significant number of people obtain LAP's assistance without anyone else ever being involved.

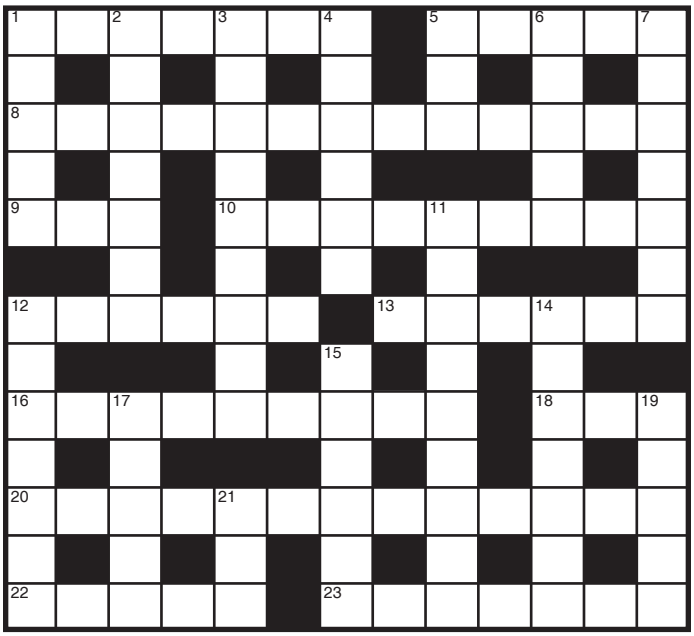
If you are in need of LAP's help, don't wait! Make the decision to trust LAP and reach out immediately. No matter how isolated you feel or how reticent you are to share your situation, please put those feelings aside and trust LAP. You do not even have to give your name. All you have to do is make the call to LAP at (866)354-9334, email LAP@louisianalap.com, or visit the website: *www.louisianalap.com*.

J.E. (Buddy) Stockwell is the executive director of the Lawyers Assistance Program, Inc. (LAP) and can be reached at (866)354-9334 or via email at LAP@louisianalap.com.

Crossword PUZZLE

By Hal Odom, Jr.

NO HEARSAY, PLEASE



ACROSS

1 Debtor (7)
5 What an egg might do (5)
8 Optical disk ___ is code-approved method of recording regularly conducted business activity (7, 6)
9 4 on a phone pad (3)
10 A personal, adoptive or authorized ___ is deemed not hearsay (9)
12 Popular Yuletide quaff (6)
13 Wriggle uncomfortably (6)
16 Old term now rendered as "things said and done" (3, 6)
18 Young dog or seal (3)
20 Recorded ___ are deemed exceptions to the hearsay rule (13)
22 Group of nine including Clio, Erato and Euterpe (5)
23 Dietrich of "The Blue Angel" (7)

DOWN

1 Due (5)
2 The ___ Tower of Pisa (7)
3 Start a solo practice, say (2, 2, 5)
4 System of government; diet plan (6)
5 Good thing to make while the sun shines (3)
6 They fought the Hutu in Rwanda in the 1990s (5)
7 Ad ___ argument is a personal attack on one's opponent (7)
11 Isolate, as a jury, from contact with the public (9)
12 Tympanum (7)
14 Get better; make better(7)
15 ___ of commerce is concept for establishing personal jurisdiction (6)
17 Pet cat in the Clinton White House (5)
19 A sheriff or rap artist may have one (5)
21 Miles of LSU football (3)

Answers on page 389.

Alcohol and Drug Abuse Hotline

Director J.E. (Buddy) Stockwell III, 1(866)354-9334
1405 W. Causeway Approach, Mandeville, LA 70471-3045 • e-mail lap@louisianalap.com

Alexandria	Steven Cook	(318)448-0082
Baton Rouge	Steven Adams	(225)921-6690 (225)926-4333
	David E. Cooley	(225)753-3407
	John A. Gutierrez	(225)715-5438 (225)744-3555
Lafayette	Alfred "Smitty" Landry	(337)364-5408, (337)364-7626
	Thomas E. Guilbeau	(337)232-7240
	James Lambert	(337)233-8695 (337)235-1825
Lake Charles	Thomas M. Bergstedt	(337)558-5032
Monroe	Robert A. Lee	(318)387-3872, (318)388-4472
New Orleans	Deborah Faust	(504)304-1500
	Donald Massey	(504)585-0290
	Dian Tooley	(504)861-5682 (504)831-1838
Shreveport	Michelle AndrePont	(318)347-8532
	Nancy Carol Snow	(318)272-7547
	William Kendig, Jr.	(318)222-2772 (318)572-8260 (cell)
	Steve Thomas	(318)872-6250

The Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.


You've mastered the law.
We've mastered coins and precious metals.
This should be a partnership!
Free Appraisals*
Bank/Safety Deposits
Estate Collections
COINS, CURRENCY, GOLD & SILVER BULLION, SCRAP JEWELRY
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MEMBER
PCGS
The Standard for the Rare
NGC
Numismatic Guaranty Corporation
AUTHORIZED DEALER
P·N·G
BBB

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 4, 2013.

Decisions

Bruce C. Ashley II, New Orleans, (2013-B-1512) **Suspended for six months, fully deferred, and to attend Ethics School** ordered by the court as consent discipline on Sept. 20, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 20, 2013. *Gist:* Neglecting and failing to properly communicate with a client in post-conviction relief matter.

Damon Joseph Baldone, Houma, (2013-B-1756) **Public reprimand** ordered by the court as consent discipline on Sept. 27, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2013. *Gist:* Inadequate supervision of non-lawyer staff resulting in impermissible rates of interest being charged on advances to clients.

Michael T. Bell, Baton Rouge, (2013-B-2491) **Suspended for one year and one day, with all but one year deferred, retroactive to Sept. 19, 2012, the date of his interim suspension**, ordered by the court as consent discipline on Nov. 22, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2013. *Gist:* Failing to properly communicate with a client regarding termination of the representation; and for violating or attempting to violate the Rules of Professional Conduct.

Brandi T. Boutwell, Monroe, (2013-B-1309) **Permanent disbarment** ordered by the court on Oct. 11, 2013. JUDGMENT FINAL and EFFECTIVE on Oct. 25, 2013. *Gist:* Neglected legal matters; failed to communicate with clients; failed to provide accounting of fees paid; failed to return unearned fees; practiced law and acted as an attorney after being placed on interim suspension; and failed to cooperate with the Office of Disciplinary Counsel.

James H. Carter, Jr., Shreveport, (2013-B-2005) **Suspended for six months, fully deferred, subject to two years' unsupervised probation** ordered by the court on Oct. 11, 2013. JUDGMENT FINAL and EFFECTVE on Oct. 25, 2013. *Gist:* Engaged in the unauthorized practice of law.

Debra L. Cassibry, Metairie, (2013-B-1923) **Suspended for one year and one day, retroactive to May 2, 2012, the date of her interim suspension**, ordered by the court on Nov. 1, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 15, 2013. *Gist:* Conviction for DWI and for failing to cooperate with the Office of Disciplinary Counsel in its investigation of this matter.

Guy J. D'Antonio, Lacombe, (2013-OB-2668) **Transfer to disability inactive status** ordered by the court on Nov. 20, 2013. JUDGMENT FINAL and EFFEC-

TIVE on Nov. 20, 2013.

John E. DeMoruelle, Kinder, (2013-OB-1783) **Reinstated to the practice of law** ordered by the court on Oct. 4, 2013. JUDGMENT FINAL and EFFECTIVE on Oct. 4, 2013.

LaShonda G. Derouen, Lafayette, (2013-B-2236) **Suspended for one year and one day, fully deferred, subject to two years' supervised probation with conditions**, ordered by the court as consent discipline on Nov. 1, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 1, 2013. *Gist:* Failing to properly supervise her non-lawyer assistant who converted client funds; failing to properly safeguard client and/or third-party funds in the trust account; improperly issuing a trust account check payable to "Cash;" and violating or attempting to violate the Rules of Professional Conduct personally or through the acts of others.

M. Randall Donald, West Monroe, (2013-B-2056) **Suspended for six months, fully deferred, subject to one-year supervised probation, and to attend Ethics School and refund fee to client** ordered by the court on Nov. 1, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 15, 2013. *Gist:* Neglected a legal matter; failed to communicate with his clients; and refused to refund clients' fees.

George J. Forest, Jr., Lafayette, (2013-OB-2235) **Transferred to disability/inactive status** by order of the Louisiana Supreme Court on Sept. 25, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 25, 2013.

Richard G. Fowler, Alexandria, (2013-B-2080) **Public reprimand and placed on two years' supervised probation** ordered by the court as consent discipline on Sept. 27, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2013. *Gist:* Failure to supervise non-lawyer staff resulting in commingling of operating funds with clients' advance deposits for court costs.

Walter W. Gerhardt, Shreveport, (2013-OB-2310) **Reinstated to the practice of law** ordered by the Louisiana Supreme Court on Nov. 8, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 8, 2013.

Charles D. Jones, Monroe, (2013-B-1112) **Disbarment, retroactive to Sept. 20, 2010, the date of his interim suspension**, ordered by the court on Sept. 13, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2013. *Gist:* Failed to provide competent representation to two clients; neglected their legal matters; failed to communicate with them in a reasonable manner; and a criminal conviction for two counts of making a false tax return and one count of tax evasion.

Craig Hunter King, Baton Rouge, (2013-OB-1310) **Readmitted to the practice of law** ordered by the court on Sept. 20, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 20, 2013.

Frank Larre, Gretna, (2013-B-2316) **Suspended for one year and one day, with all but 90 days deferred, followed by two years' unsupervised probation**, ordered by the court as consent discipline on Nov. 8, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 8, 2013. *Gist:* Practiced law while ineligible to do so.

Leslie R. Leavoy, Jr., DeRidder, (2013-B-2006) **Suspended for two years, fully deferred, subject to a period of probation**, ordered by the court on Nov. 1, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 15, 2013. *Gist:* Misleading a client regarding the status of her case in order to conceal his lack of diligence; failing to promptly refund unearned fees or return the client's file following termination; and for being convicted of DWI and engaging in other alcohol-related misconduct.

William C. Monroe, Shreveport, (2013-B-1817) **Public reprimand and ordered to attend Trust Accounting School** ordered by the court as consent discipline on Sept. 27, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2013. *Gist:* Misusing his client trust account by keeping earned fees and other personal funds in the account and paying his secretary's salary directly from the account.

Continued next page

DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Dec. 2, 2013.

Respondent	Disposition	Date Filed	Docket No.
Bruce Ashley II	[Reciprocal] Suspension.	12/2/13	13-5996
Lewis B. Blanche	Disbarred.	12/2/13	12-1853
Rodney Brignac	[Reciprocal] Suspension.	12/2/13	13-5998
Jerome M. Volk, Jr.	[Reciprocal] Suspension.	12/2/13	13-643

Discipline continued from page 359

James E. Moorman III, Covington, (2013-B-2430) **Interim suspension** ordered by the court on Oct. 21, 2013.

Madison Mulkey, Baton Rouge, (2013-B-2512) **Suspended for two years** ordered by the court as consent discipline on Nov. 22, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2013. *Gist:* Engaged in a conflict of interest by improperly entering into a business transaction with a client; made a false statement to a court; and failed to cooperate with the Office of Disciplinary Counsel's investigation.

Joseph P. Raspanti, Metairie, (2013-B-2203) **Suspended for six months, fully deferred**, ordered by the court as consent discipline on Oct. 25, 2013. JUDGMENT FINAL and EFFECTIVE on Oct. 25, 2013. *Gist:* Failure to communicate with three clients; settling a case without obtaining his client's informed consent; improperly notarizing a settlement release; and failing to promptly deliver the settlement funds to the client.

John D. Ray, Baton Rouge, (2013-B-1275) **Suspended for one year and one day, with all but 60 days deferred, subject to two years' probation**, ordered by the court on Sept. 13, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2013. *Gist:* Failure to pay bar dues and disciplinary assessment; engaging in the unauthorized practice of law; and violating or attempting to violate the Rules of Professional Conduct.

Lashanda M. Robinson, Denham Springs, (2013-B-1924) **Disbarred** ordered by the court on Nov. 15, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 30, 2013. *Gist:* Conversion of funds owed to her clients' medical providers and commingling personal funds with client funds in her trust account, all in violation of the Rules of Professional Conduct.

Daniel Scarborough IV, Shreveport, (2013-OB-2307) **Transferred to disability inactive status** ordered by the court on Oct. 2, 2013. JUDGMENT FINAL and EFFECTIVE on Oct. 2, 2013.

Jeananne Self, Shreveport, (2013-B-2361) **Suspended for two years, retroactive to Oct. 9, 2012, the date of her interim suspension, and one year deferred followed by two years' supervised probation**, ordered by the court as consent discipline on Nov. 15, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 15, 2013. *Gist:* Failed to promptly refund an unearned fee; and commingled client funds with personal funds in her trust account.

Frederick A. Stolzle, Jr., Baton Rouge, (2013-B-1176) **Disbarred, retroactive to April 29, 2009, the date of his interim suspension**, ordered by the court on Oct. 15, 2013**.** JUDGMENT FINAL and EFFECTIVE on Oct. 29, 2013. *Gist:* Neglect of legal matters; failure to communicate with clients; conversion of client funds; failure to properly terminate the representation of his clients; and engaging in criminal conduct, all in violation of the Rules of Professional Conduct.

Neil D. Sweeney, Baton Rouge, (2013-B-1568) **Suspension for one year, fully deferred, subject to two years' unsupervised probation**, ordered by the court as consent discipline on Sept. 27, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2013. *Gist:* Failed to properly supervise his non-lawyer employees, resulting in the mishandling

of legal matters.

Byrlyne June Van Dyke, Lake Charles, (2013-B-2144) **Disbarred, retroactive to June 10, 2010, the date of her interim suspension**, ordered by the court on Nov. 15, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2013. *Gist:* Failure to act with reasonable diligence and promptness; scope of representation; failure to communicate; failure to refund an unearned fee; obligations upon termination of representation; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; engage in conduct prejudicial to the administration of justice; and violating or attempting to violate the Rules of Professional Conduct.

Jose W. Vega, Houston, TX, (2013-B-1456) **Public reprimand** ordered by the court as reciprocal discipline for discipline imposed by Texas on Sept. 20, 2013. JUDGMENT FINAL and EFFECTIVE on Oct. 4, 2013. *Gist:* Neglected the legal matters of two clients; and failed to communicate with his clients.

Heidi M. Vessel, Baton Rouge, (2013-B-2277) **Public reprimand** ordered by the court as consent discipline on Nov. 8, 2013. JUDGMENT FINAL and EFFECTIVE on Nov. 8, 2013. *Gist:* Engaging in conduct prejudicial to the administration of justice; and violating the Rules of Professional Conduct.

Admonitions (private sanctions, often with notice to complainants, etc.) issued since the last report of misconduct involving:

No. of Violations

A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. 1

A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. 1

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows: A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).. 1

Failure to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege 1

Failure to cooperate with the Office of Disciplinary Counsel in its investigation. . . . 1

Failure to refund any unearned portion of a fixed fee 1

Overhead costs of a lawyer's practice, which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services. With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses. With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.. 1

Significant risk that the representation will be materially limited by a personal interest of the lawyer 1

TOTAL INDIVIDUALS ADMONISHED 4

CLIENT ASSISTANCE FUND PAYMENTS - FEB., MAY & SEPT. 2013

Attorney	Amount Paid	Gist
Robert A. Booth, Jr.	$7,500.00	#800 – Unearned fee in a succession matter
Brandi T. Boutwell	$17,623.00	#1413 – Unearned fee in a custody matter
Brandi T. Boutwell	$5,000.00	#1381 – Unearned fee in a domestic matter
Eunice Charles	$1,500.00	#1468 – Unearned fee in a domestic matter
Mel L. Credeur	$9,123.00	#1372 – Conversion in a personal injury matter
Guy J. D'Antonio	$12,356.00	#1428 – Unearned fee in a criminal matter
Barry G. Feazel	$1,300.00	#1440 – Unearned fee in a domestic matter and a debt collection matter
Katherine M. Guste	$1,330.00	#1445 – Unearned fee in a domestic matter
Katherine M. Guste	$2,250.00	#1394 – Unearned fee in a civil matter
Michael Wayne Kelly	$2,250.00	#1311 – Unearned fee in a community property matter
Kenota L. Pulliam	$9,183.00	#1218 – Unearned fee in a post-conviction matter
Kenota L. Pulliam	$3,425.00	#1228 – Unearned fee in a post-conviction matter
Kenota L. Pulliam	$5,350.00	#1118 – Unearned fee in a post-conviction matter
Maurice L. Tyler	$1,013.00	#1434 – Unearned fee in an expungement matter
Maurice L. Tyler	$5,775.00	#1436 – Unearned fee in a criminal matter

Q&A LOUISIANA CLIENT ASSISTANCE FUND

What is the Louisiana Client Assistance Fund?

The Louisiana Client Assistance Fund was created to compensate clients who lose money due to a lawyer's dishonest conduct. The Fund can reimburse clients up to $25,000 for thefts by a lawyer. It covers money or property lost because a lawyer was dishonest (not because the lawyer acted incompetently or failed to take certain action). The fund does not pay interest nor does it pay for any damages done as a result of losing your money.

How do I qualify for the Fund?

Clients must be able to show that the money or property came into the lawyer's hands.

How do I file a claim?

Because the Client Assistance Fund Committee requires proof that the lawyer dishonestly took your money or property, you should register a complaint against the lawyer with the Office of Disciplinary Counsel. The Disciplinary Counsel's office will investigate your complaint. To file a complaint with the Office of Disciplinary Counsel or to obtain a complaint form, write to: Disciplinary Counsel, 4000 South Sherwood Forest Blvd., Suite 607, Baton Rouge, LA 70816-4388. Client Assistance Fund applications are available by calling or writing: The Client Assistance Fund, 601 St. Charles Ave., New Orleans, LA 70130-3427, (504)566-1600 or (800)421-5722. Applicants are requested to complete an Application for Relief and Financial Information Form.

Does the Fund cover fees?

The Fund will reimburse fees only in limited cases. If the lawyer did no work, fees may be covered by the Fund. Fees are not reimbursable simply because you are dissatisfied with the services or because work was not completed.

Are there other avenues to explore to obtain reimbursement?

Depending on the circumstances, you may be able to file a civil lawsuit or criminal charges against the lawyer. You should consult a new lawyer or the district attorney's office about these matters. Note that there are deadlines for starting this process.

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Mediated Settlement Between NFL and Former Players a Win-Win

On Aug. 29, shortly before the 2013 football season began, the NFL and 4,500-plus retired football players reached a $765 million settlement over the league's handling of neurological injuries. With retired federal judge Layn Phillip acting as a mediator, this agreement will get financial help to the retired players in need faster and cheaper than by continuing to litigate. "Judge Orders NFL Concussion Case to Mediation," *The New York Times* (July 8, 2013), *www.nytimes.com/2013/07/09/sports/football/judge-orders-nfl-concussion-case-to-mediation.html?_r=0&adxnnl=1&adxnnlx=1387319477-XNZ9dolIar1W2kKf+LkoVw.*

The former players needed a settlement sooner rather than later with the numbers of victims continuing to climb. Cases included 34 incidents of chronic traumatic encephalopathy, seven players living with Lou Gehrig's disease and many others living with dementia or Alzheimer's disease. "More Details Emerge about Proposed NFL Concussion Settlement," *The Washington Times* (Sept. 5, 2013), *www.washingtontimes.com/blog/screen-play/2013/sep/5/more-details-emerge-about-proposed-nfl-concussion-/#ixzz2nlbTsshw.*

Absent a certified litigation class, every case would have to be addressed individually, which would be complicated, time-consuming and expensive, with a highly uncertain outcome. These factors combined made a negotiated agreement through mediation a much more attractive prospect.

The biggest hurdle going to trial for the players was to prove head trauma from playing NFL football caused their impairments. Concussions are different from broken bones

or pulled muscles in that they often go unreported. The players would have the difficult task of proving that their concussions came from the NFL and not from high school, college or some other event. Additionally, they would have to prove the concussions caused the neurological problems they are currently suffering. In this settlement, players no longer have to link specific events to causation, but merely need to show signs of neurological problems to receive a payout. The difficulty with proving causation in court is believed to be the factor that kept this settlement from reaching into the billions. "For Retired NFL Players, Concussion Settlement a Safe Bet," *Time* (Aug. 30, 2013), *http://keepingscore.blogs.time.com/2013/08/30/for-retired-nfl-players-concussion-settlement-a-safe-bet/#ixzz2nlaqvPFc.*

If the critics of the deal are correct, the NFL benefited from not having to go forward with factual discovery. "A Mediated Settlement May Not Be the Best Solution to the NFL Concussion Crisis," *The Huffington Post* (July 18, 2013), *www.huffingtonpost.com/michael-v-kaplen/a-mediated-settlement-may_b_3616499.html*.

Lawyers who represent brain trauma victims allege in their blog that the league's Mild Traumatic Brain Injury Committee had engaged in fraudulent conduct to conceal a concussion epidemic. Now the committee will not have to disclose internal files detailing what it knew, and when, about concussion-linked brain problems.

The NFL argued that many of the retired players did not have the right to sue because they played under previous collective bargaining agreements. However, a few hundred players who played during years when there was no labor contract in place were parties to the suit. The expectation that these players were likely to win the right to sue could only have added to the NFL's desire to negotiate a settlement through mediation. "NFL, Players Reach Concussion Deal," ESPN (Aug. 29, 2013), *http://espn.go.com/nfl/story/_/id/9612138/judge-nfl-players-settle-concussion-suit.*

Perhaps most importantly, this settlement prevents long-term damage to the NFL's reputation and, in turn, its bottom line. The final bill will cost each team owner about $30 million. This is only 10 percent of the average franchise's 2013 revenue, which *Forbes* placed at $286 million. This is much less than the owners would have paid had they lost the concussion lawsuit, and probably less than most owners thought they would have paid in a settlement. "Concussion Lawsuit Settlement a Win for the NFL," *Sports Illustrated* (Aug. 29, 2013), *http://sportsillustrated.cnn.com/nfl/news/20130829/nfl-concussion-lawsuit-settlement/#ixzz2nlvzgsO9.*

Still, the retired players got a lot out of this agreement. The settlement sets up a $675 million fund to deal with currently existing cognitive impairments and those that currently retired players develop in the future. Players' awards are based on a diagnosis and the amount of time in the NFL. For example, a player diagnosed with ALS is eligible for the full compensation of $5 million if he spent five seasons in the NFL. Four seasons earn a player 80 percent, three seasons 60 percent, two seasons 20 percent and anything less 10 percent in compensation. "More Details Emerge about Proposed NFL Concussion Settlement," *The Washington Times* (Sept. 5, 2013), *www.washingtontimes.com/blog/screen-play/2013/sep/5/more-details-emerge-about-proposed-nfl-concussion-/#ixzz2nlbTsshw.*

The negotiated settlement will cover all of the estimated 15,000 to 18,000 living retired players, deceased players' authorized representatives and family members, even those who were not parties to the suit.

The $675 million will be paid in installments, with most coming from league and team insurance — half of it within three years and the remainder over the following 17 years. "In the End, Settlement Not Surprising," ESPN (Aug. 29, 2013), *http://espn.go.com/nfl/story/_/id/9612467/questions-answers-nfl-retired-players-lawsuit-settlement.*

Important to many retired players is that the determinations regarding who qualifies and the amount of the award will be made by independent doctors and fund administrators agreed on by the parties. The federal court in Philadelphia, and not the NFL, will retain ultimate oversight. Economists and actuaries who evaluated the fund believe that, through this process, the amount of money in compensation will last 65 years. In addition to the $675 million fund, retired players will have access to $75 million for baseline medical assessments and $10 million for research and education. The NFL also will pay the plaintiffs' attorney fees, which will be set by the judge.

The creative nature of the terms of this mediated agreement could never have occurred through a judgment had these cases gone through the litigation process. The combination of advances in medical research, greater understanding of concussion management and enhanced benefits should prevent similar lawsuits in the future. "Mediator Q&A on NFL Concussion Settlement," Yahoo! News (Aug. 29, 2013), *http://news.yahoo.com/mediator-q-nfl-concussion-settlement-230618418--spt.html.*

The hope is that this agreement truly helps those players who need it most and continues the NFL's work to make the game safer for current and future players.

—Matthew Morris
3rd-Year Student, LSU Paul M. Hebert Law Center, Civil Mediation Clinic
Under the Supervision of
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Baton Rouge, LA 70810

Parties Cannot Consent to Waive Unconstitutional Jurisdiction of Bankruptcy Court

BP RE, L.P. v. RML Waxahachie Dodge, L.L.C. (In re BP RE, L.P.), 735 F.3d 279 (5 Cir. 2013).

On Nov. 11, 2013, the 5th Circuit vacated and remanded the decision of the district court finding that the bankruptcy court lacked Article III authority to enter final judgment as to the plaintiff's state-law tort and contract claims. The debtor, BP RE, L.P., filed for Chapter 11 bankruptcy and filed adversary complaints in the bankruptcy court alleging various state-law tort and contract claims against multiple RML entities (RML). The bankruptcy court entered a final judgment denying relief, and the district court affirmed.

On appeal, the 5th Circuit reviewed 28 U.S.C. § 157, under which district courts may refer "cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy court. Those cases that are "otherwise related to a case under title 11" are deemed non-core proceedings, and the bankruptcy court has the authority to submit proposed findings of fact and conclusions of law to the district court as to those matters. 28 U.S.C. § 157(c)(1). However, the statute further provides that with the consent of the parties, the bankruptcy court can enter final, appealable judgments in non-core proceedings. 28 U.S.C. § 157 (c)(2).

Both the debtor and RML agreed that the proceedings were non-core proceedings, and the 5th Circuit, assuming that both BP RE and RML consented to the jurisdiction of the bankruptcy court, reasoned that the bankruptcy court's entry of a final judgment was appropriate under the *statute*. However, the 5th Circuit determined that it was bound by *Stern v. Marshall*, 131 S.Ct. 2594 (2011), which held that "regardless of *statutory* authority the bankruptcy court did not have the *constitutional* authority to enter a final judgment on claims that are so deeply at the heart of the federal judiciary's Article III powers and are not necessary to the resolution of the bankruptcy estate."

The 5th Circuit went on to adopt the reasoning of the 6th Circuit in *Waldman v. Stone*, 698 F.3d 910, 919 (6 Cir. 2012), *cert. denied*, 133 S.Ct. 1604 (2013), which further illustrated that the parties cannot consent to such circumvention of Article III. The 5th Circuit, therefore, determined that as the parties could not consent to the subject-matter jurisdiction of the bankruptcy court as to the state-law claims, the bankruptcy court lacked the *constitutional* authority to enter a final judgment on BP RE's state-law claims because they were not necessary to the resolution of the bankruptcy estate.

State-Law Counterclaims Against Attorney Fee Application is Core Proceeding Under *Stern*

Frazin v. Haynes & Boone, L.L.P. (In re Frazin), 732 F.3d 313 (5 Cir. 2013).

The debtor, Timothy Frazin, filed for Chapter 13 bankruptcy, and the bankruptcy court entered an order discharging the debtor. However, the case remained open pending the outcome of the debtor's state-court suit. On appeal of the state-court suit, Frazin hired Haynes & Boone, L.L.P., as special counsel to represent him. Thereafter, Haynes & Boone filed applications in the bankruptcy court seeking approval of its fees, and Frazin filed state-law counterclaims against the firm for malpractice, violations of the Texas Deceptive Trade Practice Act (DTPA) and breach of fiduciary duty. The bankruptcy court overruled Frazin's state-law counterclaims and awarded the

attorney's fees. The district court affirmed.

On appeal to the 5th Circuit, Frazin argued that under *Stern v. Marshall*, 131 S.Ct. 2594 (2011), the bankruptcy court lacked the authority to enter a final judgment on his state-law counterclaims. In *Stern*, the Supreme Court held that under 28 U.S.C. § 157(b)(2)(C), "counterclaims by the estate against persons filing claims against the estate" are "core proceedings." *Id.* at 2604-05. The Supreme Court went on, however, to hold that section 157(b)(2)(C) is unconstitutional "insofar as it allows bankruptcy courts to enter final judgments in state-law counterclaims that would not necessarily be resolved in the process of ruling on a creditor's proof of claim." *Frazin* at 318. The 5th Circuit determined that the debtor's state-law counterclaims were core proceedings, thereby raising the question of whether any of the debtor's counterclaims would necessarily be resolved in the claims-allowance process.

As to the malpractice counterclaim, the 5th Circuit reasoned that bankruptcy court had to review a common "nucleus of operative fact" to determine the "award of the professionals' fees and enforcement of the appropriate standards of conduct [which] are inseparably related functions of bankruptcy courts." *Quoting Osherow v. Ernst & Young, L.L.P. (In re Intelogic Trace, Inc.)*, 200 F.3d 382 (5 Cir. 2000); *Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.)*, 163 F.3d 925 (5 Cir. 1999). Therefore, the malpractice claim was not independent of federal bankruptcy law but was "necessarily resolvable" in order to rule on the attorneys' fees. Thus, the bankruptcy court had authority to enter a final judgment.

Regarding the breach-of-fiduciary-duty counterclaim, the 5th Circuit found that "[b]ecause the sole purpose of Frazin's breach of fiduciary duty action was to defeat the Attorneys' fee applications in the bankruptcy court, the bankruptcy court necessarily had to resolve every aspect of his breach of fiduciary duty claim to rule" on the fee applications. Thus, the bankruptcy court had jurisdiction to decide those claims as well.

The counterclaims regarding violations of the DTPA not only required the bankruptcy court to make necessary factual determinations but required several legal determinations as to whether the facts "could form an element of one or more state-law causes of action outside of the court's jurisdiction." Therefore, the bankruptcy court lacked jurisdiction to enter a final judgment as to that claim, but the 5th Circuit found the bankruptcy court acted within its constitutional authority as to the factual determinations made in the course of analyzing that claim.

The 5th Circuit held that the bankruptcy court had the authority to enter final judgments as to the state-law counterclaims regarding malpractice and breach of fiduciary duty, but reversed the bankruptcy court's decision as to the DTPA counterclaims and remanded those claims to the district court.

—Tristan E. Manthey
Chair, LSBA Bankruptcy Law Section
and
Alida C. Wientjes
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Community Property

Drennan v. Drennan, 12-0503 (La. App. 5 Cir. 7/3/13), 121 So.3d 177, *writ denied*, 13-2200 (La. 11/22/13), 126 So.3d 493.

Shares in a family corporation were sold to Mr. Drennan by his mother during the community by a credit sale. Her subsequent forgiving of a part of the debt did not make that portion of the shares his separate property as a result of this donation/forgiveness. The shares remained community because they had already been sold to him and thus could not later be donated.

Ms. Drennan was entitled to reimbursement of one-half of the portion of community funds loaned to Mr. Drennan from the corporation to purchase a home. Although he later paid himself a bonus and repaid the loan with that money, she was entitled to one-half of the money used at the time of the purchase, not reduced for the tax he later had to pay on the bonus money. Because the home was acquired after the termination of the community, it was his separate property, so he was not entitled to reimbursement for funds he spent to renovate it.

To value the business, the trial court averaged the reports of the three experts, but one report used was not as of the stipulated valuation date. The court of appeal found the trial court's ruling to be a legal error, and it conducted a *de novo* review. It found that while each expert had used reasonable valuation methodologies, each had flaws, but it, too, averaged the valid reports. The court found the reports took goodwill into consideration, even though two of the reports did not address it at all. Ms. Drennan also was awarded legal interest on the sums due to her by Mr. Drennan.

Custody

Lawson v. Lawson, 48,296 (La. App. 2 Cir. 7/24/13), 121 So.3d 769.

The parties' stipulated interim agreement to modify the physical custodial arrangement pending trial was a final judgment, and Mr. Lawson's failure to show a change of circumstances once his motions were tried did not cause them to "revert" to the earlier agreement *in toto*. The court did not err in deferring a final decision on the child's school until after he completed middle school at the school he was attending. Although Ms. Lawson was the domiciliary parent and had the right to choose the school, Mr. Lawson had the right to present that issue to the court as part of his custody rule.

Hernandez v. Jenkins, 12-2756 (La. 6/21/13), 122 So.3d 524.

The Louisiana Supreme Court reversed the lower courts, who had denied the mother's request to relocate five hours away in Alabama, finding "that under the specific facts presented in this case, the family court failed to properly weigh and apply the relevant factors." The court found that the trial court improperly focused on the effect the relocation would have on the father, rather than on the benefits to the child. The court found that the father's physical custodial time would not be significantly affected, particularly as the mother had offered additional time. Moreover, it found that the trial court did not give sufficient weight to the father's failure to pay his child support timely and his history of being in arrears. Not only would the relocation allow the mother better job opportunities, but it would also allow her and the child to live together with her new husband and his children, all of which would benefit the child.

Child Support

Rutland v. Rutland, 13-0070 (La. App. 5 Cir. 7/30/13), 121 So.3d 776.

Good cause existed not to make the final child support award retroactive to the date of demand due to delays caused by both parties to allow the court to determine their incomes. The trial court properly found that Mr. Rutland was voluntarily underemployed due to his being fired for sleeping on the job. The court did not err in not using that prior income for child support because Mr. Rutland had obtained new jobs, and the trial court did not think he would reach the same income level. However, the court imputed some greater income to him than he was currently earning. Funds he received from selling his house and withdrawing his pension were not continuing sources of income and were properly excluded from his income calculation.

Paternity

Pociask v. Moseley, 13-0262 (La. 6/28/13), 122 So.3d 533.

La. Civ.C. art. 189 provides that if the husband lives separate and apart from the mother continuously for 300 days preceding the birth of the child, the father's right to seek an action for disavowal of paternity does not commence to run until he is notified in writing that it is being asserted he is the father of the child. The

Louisiana Supreme Court found that this provision must be read *in pari materia* with the same language regarding "living separate and apart continuously" in the divorce articles because divorce and disavowal actions were sufficiently related and because the Legislature was cognizant of that phrase when it amended and reenacted article 189 in 1999 and 2005. In this case, the court found that one or two overnight visits between the parties during that 300-day time period did not interrupt their living separate and apart continuously, especially because there were no claims of cohabitation, sexual relations, reconciliation or even attempted reconciliation.

Spousal Support

Roberson v. Roberson, 12-2052 (La. App. 1 Cir. 8/5/13), 122 So.3d 561.

The trial court denied Ms. Roberson's exceptions of improper venue, *lis pendens*, *res judicata* and no right of action to Mr. Roberson's petition to make a final spousal support judgment of the 24th Judicial District Court executory and to terminate the support in the 21st Judicial District. Her appeal was converted to a writ because a judgment denying such exceptions is interlocutory and nonappealable. Because the court of appeal found error in the trial court's judgment that it believed should be corrected in the interest of judicial economy, it converted the appeal to a writ application. Because support orders can be registered only for subsequent modification by the person awarded support, the parish where Ms. Roberson resided was in an inappropriate venue, and the 21st Judicial District Court lacked jurisdiction, unless the obligee filed for registration and confirmation of the judgment. The court remanded the matter to the 21st Judicial District Court with instructions to transfer the proceedings to the 24th Judicial District Court.

Biggers v. Biggers, 13-0127 (La. App. 5 Cir. 9/18/13), 122 So.3d 604.

Mr. Biggers was not in contempt for failing to pay Ms. Biggers's COBRA insurance premiums for medical, dental and vision coverage as their consent judgment was not clear that he was required to pay all three coverages, even though she had all three coverages during their marriage. She was partially to blame for failing to respond to his advising her that he was only going to pay the medical portion. Further, the trial court did not err in ordering him, even though he was not found in contempt, to pay her medical costs for the stipulated period of time that he was to pay for the COBRA coverage. The court stated, "In these limited circumstances, where a term of the judgment can no longer be enforced, we do not find that the trial court abused its discretion in enforcing the intent of the judgment that Bonnie Biggers receive health care." No attorney's fees were due because both parties were at fault for the loss of the COBRA coverage.

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Admiralty: Enforceability of Settlement Agreements

Hardison v. Abdon Callais Offshore, L.L.C., ____ Fed. Appx. ____ (5 Cir. 2013), 2013 WL 6659271.

Hardison injured his foot while using a milk crate to climb into his bunk aboard a vessel owned by Abdon Callais. The injury grew progressively worse, and he was sent ashore for treatment, resulting in amputation of a portion of his lower right leg and foot. The injury was aggravated by circulatory problems, apparently caused by Hardison's diabetes, diagnosed nine years earlier, for which he discontinued insulin treatment after six years, a pre-existing condition he concealed on his job application.

Hardison engaged an attorney, George Byrne, who filed suit against Abdon Callais based on negligence claims under the Jones Act and a claim that use of the milk crate as a climbing aid constituted unseaworthiness, and requesting damages and future maintenance and cure. The district court granted Abdon Callais's motion for summary judgment, dismissing the future maintenance and cure claim based on the *McCorpen* defense of concealment of a pre-existing condition.

One week before the scheduled trial, the parties reached an agreement where Hardison would receive $90,000 gross in settlement of the remaining claims. The court held a hearing to put the agreement on record, with Hardison participating via telephone because of his medically related mobility issues. All parties acknowledged understanding and acceptance of the settlement terms as previously agreed. The judge informed Hardison that he would receive the settlement documents by mail and, upon signing and returning them, would get a check from Abdon Callais. Hardison took the documents to a local law firm, where he was advised not to sign them. He fired Byrne, engaged the other attorney, and refused to sign or accept payment.

Abdon Callais moved for summary judgment to enforce the settlement. Hardison opposed the motion, arguing that he had never agreed to settle the case. Byrne's firm intervened, contending that the settlement was valid and that it was entitled to receive costs, fees and compensation. The district court granted Abdon Callais's motion to enforce the settlement, and Hardison appealed.

The 5th Circuit opened its discussion by quoting *Strange v. Gulf & S.A. S.S. Co.*, 495 F.2d 1235, 1236 (5 Cir. 1974): "In the absence of a factual basis rendering it invalid . . . an oral agreement to settle a personal injury cause of action within the admiralty and maritime jurisdiction of the federal courts is enforceable and cannot be repudiated." The court then quoted *Borne v. A & P Boat Rentals No. 4*, 780 F.2d 1254, 1256 (5 Cir. 1986): "Seamen such as [Hardison] are wards of admiralty whose rights federal courts are duty-bound to jealously protect." The proper inquiry is whether Hardison relinquished his claims for personal injury with "an informed understanding of his rights and a full appreciation of the consequences." *Id.* at 1256-57. Examining the record, the court found that negotiations were at arms' length and conducted in good faith by both parties, with adequate legal and medical counsel, the amount was not patently inadequate and Hardison accepted it with a full understanding of its terms and consequences. Thus, the judgment enforcing the settlement was affirmed.

No precedent here, but a trenchant reminder that the courts' paternalism toward "wards of the admiralty" has (arguably reasonable) limitations.

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Louisiana's New Home Warranty Act

Shaw v. Acadian Builders & Contractors, L.L.C., 13-0397 (La. 12/10/13), ____ So.3d ____, 2013 WL 6474946.

This case arose when a homeowner filed an action under Louisiana's New Home Warranty Act (NHWA) against the construction company that originally built her house. At trial, the plaintiff's expert testified that the exterior walls of the house fell woefully short of providing the requisite weather-resistant envelope. The most significant construction defect was the builder's improper application of moisture-resistant Tyvek paper under the house's stucco façade. The plaintiff's expert claimed that this defect permitted water intrusion into the structure and ultimately brought about the decay of the house's load-bearing walls.

The specific issue facing the court was whether the builder's failure to properly waterproof the stucco exterior of the plaintiff's house constituted a "major structural defect" under the terms of the NHWA simply because that faulty construction eventually caused "actual physical damage" to the home's load-bearing walls. Thus, the resolution of this case turned on the court's interpretation of La. R.S. 9:3143(5), which defines the term "major structural defect" as:

> any actual physical damage to the following designated load-bearing portions of a home caused by failure of the load-bearing portions which affects their load-bearing functions to the extent the home becomes unsafe, unsanitary, or is otherwise unlivable:
>
> (a) Foundation systems and footings.
>
> (b) Beams.
>
> (c) Girders.
>
> (d) Lintels.
>
> (e) Columns.
>
> (f) Walls and partitions.
>
> (g) Floor systems.
>
> (h) Roof framing systems.

The majority opinion, authored by Justice Knoll, concluded that the defect in the house's stucco cladding was a "major structural defect" under the NHWA because the stucco exterior was an incorporated component part of the load-bearing wall that sat beneath it. According to the majority, the fact that the stucco exterior had no "structural bearing" of its own was wholly irrelevant because it did not constitute an independent portion of the home. The majority considered its interpretation of the term "load-bearing wall" in La. R.S. 9:3143(5) to be consistent with both the purpose of the statute and the intention of the Legislature. In an impassioned dissent, Justice Guidry disagreed with the majority's conclusion that a house's stucco exterior forms part of the same "wall" as the load-bearing studs and plywood located beneath it. The dissent found that the majority's interpretation of La. R.S. 9:3143(5) "expands the scope of the warranty protection intended by the legislature" and "will lead to absurd results."

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World Trade Organization

Ninth Ministerial Conference, Bali, Indonesia (Dec. 3-6, 2013).

The 159 members of the World Trade Organization (WTO) met for the ninth time as the Ministerial Conference to again address the fledgling Doha Development Agenda (DDA) proposed in 2001. After a decade of starts and stops, the WTO membership agreed to a series of decisions and declarations in Bali representing the first substantive multilateral WTO agreement since the creation of the organization in 1984.

The most significant result is the WTO Trade Agreement on Trade Facilitation (WT/MIN(13)/W/8). Trade facilitation involves guidelines and procedures to streamline trade by reducing costs and delays associated with border procedures. For years, WTO members have sought binding commitments on trade facilitation with little success. The Agreement on Trade Facilitation addresses numerous disciplines to expedite movement of goods through customs, including efficiency and transparency. Some of the important disciplines subject to harmonization throughout the WTO include the following:

► publication of customs laws, regulations and procedures to increase transparency and predictability of shipment;

► one inquiry point for trade information;

► publication and comment period on new customs laws and regulations prior to implementation;

► enhanced rights to appeal customs decisions;

► disciplines on customs charges and fees;

► procedures for expedited shipments;

► efficient and speedy release of perishable goods; and

► reduction in necessary documentation and formalities.

The Organization for Economic Co-operation and Development (OECD) estimates that for every 1 percent reduction in global trade costs, income associated with international trade can increase by as much as $40 billion. A fully implemented WTO Agreement on Trade Facilitation can cut trade costs by nearly 14.5 percent for low-income countries and 10 percent for high-income countries.

The WTO members also reached an agreement on food security, but agreement in other contentious areas such as agriculture, and specifically cotton, remain elusive.

Iran Economic Sanctions

Joint Plan of Action to Resolve Iran Economic Sanctions, Geneva, Switzerland (Nov. 24, 2013).

China, France, Germany, Russia, the United Kingdom and the United States (collectively referred to as E3+3) reached agreement with Iran on a plan of action to end various economic sanction regimes against Iran in exchange for a freeze of Iran's nuclear programs. The first step of the plan consists of a renewable six-month period during which Iran would, *inter alia*, agree not to enrich uranium more than 5 percent and dilute half of its existing uranium enriched to 20 percent to no more than 5 percent. Iran also agrees to enhanced monitoring by and cooperation with the International Atomic Energy Agency (IAEA), including IAEA monitor access to centrifuge assembly workshops, centrifuge rotor production workshops and storage facilities and uranium mines and mills.

In exchange for Iran's concessions, the E3+3 agrees to allow repatriation of an agreed amount of revenue held abroad and to suspend U.S. and E.U. sanctions on Iran's petrochemical, gold and precious metal exports. The United States further agreed to refrain from imposing new nuclear-related concessions and sus-

pended sanctions on Iran's auto industry. The E3+3 will establish a financial channel to facilitate humanitarian trade for Iran's domestic needs using Iran's oil revenues held abroad. This trade could include food and agriculture products, medicine, medical devices and medical expenses.

The Joint Plan of Action contains a final step proposal to reach a comprehensive solution, with plans to negotiate and implement the final step details no more than one year after the adoption of the Joint Plan of Action. As sanctions slowly recede and trade with Iran opens up, U.S. businesses should be careful to obtain the necessary export control and other licenses to supply Iran with the limited categories of goods released from sanction.

U.S. Supreme Court

BG Group, P.L.C. v. Republic of Argentina, Docket No. 12-138 (argued Dec. 2, 2013).

The U.S. Supreme Court held oral argument on an issue of first impression regarding U.S. federal court authority to review investor-state disputes. The precise issue before the court is whether a federal court may review an arbitrators' jurisdictional conclusion in a dispute settlement proceeding under a Bilateral Investment Treaty (BIT). This case is one of the many pieces of litigation resulting from the implosion of Argentina's economy in 2002 and the resulting government decisions regarding debt holdings, nationalization of foreign assets and currency linkages. The United Kingdom and Argentina concluded a BIT in 1993 providing the investors from each nation certain protections and guarantees, including due process, fair compensation and limited expropriation. The BIT includes arbitration procedures for claims brought by an investor against the other host state. Prior to initiating arbitration, Article 8(2)(a) of the BIT requires the aggrieved investor to first seek resolution before a competent tribunal in the host state for a period of at least 18 months.

BG Group, a British corporation, entered into a series of investments in MetroGAS, a private company distributing natural gas in the province of Buenos Aires. The investments contain a linking clause tying investment returns to U.S. currency and price indexes. BG had a 45 percent investment stake in MetroGas when Argentina's economy collapsed. Argentina subsequently enacted a series of laws and issued decrees decoupling the U.S. currency and index links. BG initiated arbitration in the United States under the BIT in 2003 because of the diminished value of its investment resulting from the decoupling laws. BG did not seek recourse before a competent tribunal in Argentina before arbitration, in part, because Argentina passed a law staying all lawsuits arising out of emergency measures, such as the decoupling law, taken to abate the economic crisis.

A panel of three arbitrators issued a ruling in favor of BG in 2007, noting that despite BG's failure to comply with Article 8(2)(a), it still retained jurisdiction to arbitrate the dispute. The arbitral panel cited Argentina's emergency measures restricting access to its courts as "absurd or unreasonable" under Article 32(b) of the Vienna Convention on the Law of Treaties, and therefore BG's application for arbitration was proper despite the 18-month temporal precondition of the BIT. The panel awarded BG $185 million in damages.

Argentina filed a complaint with the U.S. District Court for the District of Columbia seeking to vacate the award due to significant procedural deficiencies, namely failure to comply with Article 8(2)(a). The D.C. court upheld the award and sanctioned the arbitral tribunal's ability to rule on its own jurisdiction. Argentina sought and obtained relief at the U.S. Court of Appeals for the District of Columbia Circuit, which overturned the decision, finding that the tribunal lacked jurisdiction because the parties failed to satisfy the Article 8(2)(a) preconditions. The award was vacated under Section 10(a) of the Federal Arbitration Act for BG's failure to file a lawsuit in Argentina and satisfy the BIT's temporal requirement.

The U.S. Supreme Court granted BG's petition for a writ of certiorari on June 10, 2013. The court entertained briefs from numerous *amicus curiae*, including the Professors and Practitioners of Arbitration Law, United States Council for International Business. Generally speaking, U.S. Supreme Court cases limit judicial review narrowly to the threshold question of dispute arbitrability, reserving most other issues to the arbitration. One particularly interesting question before the court is the interpretation of Article 8(2)(a) itself. Interpretation of treaty language requires application of the rules of the Vienna Convention on the Law of Treaties, to which the United States is not a signatory. However, the United States generally accepts that many of the provisions in the Vienna Convention are customary rules of international law that apply in the United States automatically. The court may not reach this issue as it may accept the federal government's request to remand the case with instructions for judicial review of cases involving BITs.

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5th Circuit Approves Sexual Stereotyping as Fourth Way to Prove Same-Sex Sexual Harassment

EEOC v. Boh Bros. Const. Co., 11-30770 (5 Cir. 2013), 731 F.3d 444.

Ironworker Kerry Woods worked for Boh Brothers on an all-male crew on the Twin Spans Bridge in New Orleans. One day, Woods told his co-workers he regularly brought Wet Wipes with him to work and used that instead of toilet paper. Woods' supervisor, Chuck Wolfe, found this odd and, as he explained to the EEOC later, "[Woods' co-workers] all picked on him about it. They said that's kind of feminine to bring these, that's for girls . . . . You keep that to yourself . . . ."

Wolfe and the crew regularly used "very foul language" and "locker room talk." Wolfe, a primary offender in this, was rough and mouthy and often kidded his workers. After three months on the crew, Wolfe targeted Woods frequently with his abuse. Wolfe would often call Woods pussy, princess and faggot two or three times a day. He would approach Woods while he was bent over working and simulate anal sex with him two or three times a week. Over about a 10- month period, Wolfe urinated on the bridge in front of Woods about 10 times and, while doing so, would sometimes smile and wave at Woods. Once, Wolfe suggested to Woods that he would have placed his penis in Woods's mouth had Woods not been in a locked vehicle.

After Woods was with the crew for about 10 months, a superintendent investigated Woods for the fireable offense of trying to acquire his co-workers' time-sheets. The superintendent met with Woods about this but did not disclose the purpose of the meeting. Woods brought up Wolfe's harassment of him and told of possible theft by Wolfe. The superintendent placed Woods on leave without pay and, upon request of Woods's foreman, a few days later brought him back to work on another crew. The superintendent spent a total of 20 minutes checking into the sexual harassment complaint. Woods's theft charges against Wolfe were assigned to a private investigator who spent almost 85 hours evaluating those charges.

Months after Boh Brothers transferred him, Boh Brothers laid off Woods. Woods sued Boh Brothers for sex discrimination and harassment. A jury found for Woods on the harassment charge and for Boh Brothers on the discrimination charge. Boh Brothers appealed, and the 5th Circuit reversed, finding, as a matter of law, error by the jury. On rehearing en banc, the 5th Circuit affirmed the jury's judgment of harassment, overturned the $201,000 punitive damage award and remanded to the court for the review of the $50,000 compensatory damage award.

The 5th Circuit found that Wolfe harassed Woods because of sex and, more specifically, because Wolfe had taunted Woods tirelessly and thought Woods not a "manly-enough man." Given the review standards, the court could not say "that no reasonable juror could have found that Woods suffered harassment because of his sex." Prior to this case, sexual harassment could be proven three ways in the 5th Circuit in a same-sex work environment, which were provided in *Oncale v. Sundowner Offshore Servs., Inc.*, 118 S.Ct. 998 (1998). In this case, the 5th Circuit used sexual stereotyping as described in *Price Waterhouse v. Hopkins,* 109 S.Ct. 1775

(1989), to prove harassment. No evidence was presented that the harasser or victim was homosexual or that the victim was effeminate. Although the harassment included homosexual taunts, the court cited Wolfe's testimony that he did not think Woods homosexual and that his taunts were because of Woods's lack of masculinity. The court found this subjective proof that Wolfe's harassment incidents were attempts to denigrate Woods because Woods fell outside Wolfe's manly man stereotype and was not just rough talk among an all-male crew.

Regarding the *Ellerth/Faragher* affirmative defense available where there is no adverse employment action, the court reasoned that had Boh Brothers implemented suitable institutional policies and educational programs regarding sexual harassment, it likely would have prevailed.

Louisiana Wage Payment Act

Davis v. St. Francisville Country Manor, L.L.C., 13-0190 (La. App. 1 Cir. 11/1/13), ____ So.3d ____, 2013 WL 5872030.

Licensed practical nurse Yolunda Davis worked for the St. Francisville Country Manor. In 2012, she gave her employer notice of her resignation and, that same day, quit. She asked her employer for payment of her unused paid days off (PDO), and the employer refused. Davis filed suit seeking the unpaid PDO under the Louisiana Wage Payment Act, La. R.S. 23:631-634. Her employer filed a motion for summary judgment arguing that PDO was not vacation pay, that it provided Davis PDO as a mere gratuity, and that Davis's hasty departure violated policy that required proper notice of resignation before any payment is made for the employee's unused PDO. The court ruled for the employer, and Davis appealed.

The appellate court analyzed whether PDO was protected under the Act by first determining whether PDO was vacation pay under La. R.S. 23:631(D)(1). It noted that the triggering event for making vacation pay protected under that subsection was when the employee earned the right to be compensated when not at work. The court found that the employer's PDO policy stated that an employee would accrue 3.33 hours per pay period and was entitled to it if certain conditions were met. The court found no difference between PDO and "vacation time with pay" as defined under 23:631(D)(1). It found nothing in the employer's policy stating that PDO was not earned. The court concluded, therefore, that Davis's unused PDO was not a gratuity and was protected under the Wage Payment Act as vacation time with pay.

As to whether the employer could forgo payment of PDO as its policy dictated no payment under the circumstances, the court found that such action would violate the anti-forfeiture requirements of La. R.S. 23:634 and the holding from *Beard v. Summit Inst. of Pulmonary Med. & Rehabilitation,* 97-1784 (La. 3/4/98), 707 So.2d 1233. The court remanded the case for trial.

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Mineral Law

"Legacy" Lawsuit; Improper Cumulation Exception

Dietz v. Superior Oil Co., 13-0657 (La. App. 3 Cir. 12/11/13), ____ So.3d ____, 2013 WL 6488247.

This "legacy" lawsuit involved two pieces of property with two different mineral lease chains in Acadia Parish. Plaintiffs, the Dietz family, claimed soil and groundwater contamination ruined their property. Plaintiffs sought restoration damages and injunctive relief prior to the termination of the leases. Defendants filed two exceptions — prematurity (La. Min. Code art. 136) and improper cumulation (La. C.C.P. art. 464) — in response to plaintiffs' first

amended petition. The trial court reserved ruling on the prematurity exception but granted the exception of improper cumulation. Plaintiffs were ordered by the court to amend their petition to include the proper parties and causes of action. Plaintiffs filed a second amended petition but failed to delete any parties or causes of action as the court directed. Defendants filed the same exceptions. Plaintiffs amended their petition a third time and added a family member and owner in indivision (McDonald) as an additional plaintiff. The Dietz family plaintiffs eventually settled; McDonald was then the only plaintiff. The trial court granted defendants' exceptions. McDonald's request for a new trial was denied. She appealed.

The 3rd Circuit held that the prematurity exception was improperly granted because Article 136 of the Mineral Code does not govern claims for restoration and, therefore, "notice," pursuant to that article, was not required. Additionally, the court found that prematurity was improperly granted because neither the Mineral Code nor the Civil Code provides that claims for soil and groundwater contamination arise only at the end of a lease. *See*, *Marin v. Exxon Mobil Corp.*, 09-2368 (La. 10/19/10), 48 So.3d 234.

As to the improper cumulation exception, although the 3rd Circuit did not agree with the trial court's reasoning for granting the exception, it found that the dismissal of plaintiffs' case without prejudice was proper because the plaintiffs failed to follow the court's order when they filed the second amended petition. Therefore, the case was properly dismissed pursuant to the mandatory language of La. C.C.P. art. 464, which states: "The penalty for noncompliance with an order to amend is a dismissal of plaintiff's suit." As to McDonald's motion for new trial, the 3rd Circuit found that the appeal was really on the merits of the exceptions rulings, not on the request for new trial. Because the court dealt with the merits of those exceptions, it did not address the new trial issue any further.

Valid Oral Transfer of Immovable Property

Harter v. Harter, 48,426 (La. App. 2 Cir. 10/2/13), ____ So.3d ____, 2013 WL 5477227.

In a complicated and twisted case involving financial maneuverings by various family members following the death of their mother, the 2nd Circuit held that certain mineral interests orally conveyed by Mike Harter to his brother and sister, David Harter and Jan Harter Pipkin, as working interest owners, were valid conveyances pursuant to La. Civ.C. art. 1839 because evidence at trial showed (1) that the property (mineral interests, incorporeal immovables) was actually delivered, and (2) that the transferor (Mike Harter) recognized the transfer when he was interrogated under oath at trial.

The appellate court found the following evidence to be conclusive that a valid oral transfer of mineral interests occurred: (1) Mike Harter admitted at trial that he issued monthly revenue payments to David Harter and Jan Pipkin from January 2008 until August 2008, which were generated by the mineral leases; (2) Mike Harter admitted he instructed his secretary to make entries in his oil company's internal records evidencing transfer of 25 percent interests of the working interest to David and Jan and to add them as working interest owners to the ownership decks; and (3) Mike Harter stated under oath at trial that both of these events occurred.

Mike Harter argued that because the parties agreed to later reduce the interests to writing, the transfer was not perfected as he had not yet provided his consent. The court found this argument unavailing, however, because Mike had performed his obligations pursuant to their oral contract. Thus, the 2nd Circuit found the oral transfer of the working interests to David Harter and Jan Pipkin was complete and reversed the trial court's involuntary dismissal, remanding the case for further proceedings.

Update on Louisiana's New Rules Relating to Salt Caverns

On Nov. 26, 2013, the Louisiana Department of Natural Resources (LDNR) held a public hearing to accept comments relating to the new rules for solution-mining (Docket No. IMD-2013-07) and storing of hydrocarbons in salt dome cavities (Docket No. IMD-2013-08). The hearing lasted approximately two hours. Fifteen people — residents of Bayou Corne, representatives of various environmental groups and some local political officials — spoke. The comments included, but were not limited to, support for (1) requiring that the cavern owner/operator or the State properly reimburse residents who were evacuated/relocated; (2) requiring that variances be made a part of the public record and made known to residents; (3) requiring that operators perform environmental-impact studies; (4) doubling spacing parameters (*e.g.*, from periphery of salt and from top of salt stock); and (5) requiring that 3-D seismology be used near usable sources of drinking water. The new rules have not yet been approved by LDNR. The LDNR is currently going through the comments. Look for further action in the upcoming issues of *Louisiana Register*.

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Informed Consent

Snider v. La. Med. Mut. Ins. Co., 13-0579 (La. 12/10/13), ____ So.3d ____.

A medical-review panel decided that the defendant physician did not comply with the appropriate standard of care and that this conduct was a factor in causing "minor damage." The case was then tried to a jury, which disagreed with the panel's opinion and rendered a verdict for Dr. Yue.

Mr. Snider appealed and urged a number of assignments of error, including an independent assignment concerning the failure to obtain informed consent. The 3rd Circuit reversed the jury's verdict, basing its opinion — and discussion — on only this assignment of error, referencing no others: The physician failed to properly obtain informed consent. Despite Snider's having signed the consent form, the court decided the consent was not *informed,* as it related to implanting a pacemaker. It would have been reasonable for a patient to withhold consent for the placement of a pacemaker if adequately informed that there was a low-risk alternative of doing nothing, given the non-emergency nature of his condition.

The issues of liability and damages had been bifurcated. The appellate court remanded to the district court to decide the issue of damages, but the Louisiana Supreme Court granted certiorari. The Supreme Court's opinion contains an extensive discussion of the Uniform Consent Law, La. R.S. 40:1299.40. The pacemaker procedure requires specific disclosures pursuant to 48 La. Admin. Code § 2349.

Some lines on Snider's form where remarks about his particular situation should have been listed were left blank. Information listing reasonable alternatives and the risks of those alternatives should have been explained on other lines, which were otherwise left blank, except for the following: "SYMPTOMS FROM THE ABNORMAL HEARTRATE WILL CONTINUE."

Dr. Yue testified that he had provided and explained to Snider the required information and had answered all of his questions. The consent form signed by Snider did not state, and there was no evidence other than Dr. Yue's own testimony to prove, that the explained consent was being obtained pursuant to the lists formulated by the Louisiana Medical Disclosure Panel concerning risks and options. Absent this evidence, in order for Dr. Yue to be covered by that subsection, La. R.S. 40:1299.40)(E)(7)(c)(iv), the health-care provider who will actually perform the procedure must advise the patient that he has obtained consent "pursuant to the lists formulated by the" disclosure panel.

The first paragraph of the consent form stated the risks required to be disclosed were "as defined by the Louisiana Medical Disclosure Panel *or* as determined by" the physician. The consent form did not list the risks identified by the panel but instead listed the risks as those "identified by the physician."

Certain information required for compliance with § 40(E) was omitted, thus requiring the jury to be instructed pursuant to paragraph (E)(7)(a)(ii) that there was a rebuttable presumption the surgeon *was negligent* in his duty of full disclosure. However, the district judge instead "instructed the jury that in a medical malpractice suit against a doctor 'a signed, written consent form provides a rebuttable presumption of *valid consent*'" (emphasis added).

The court then wrote: "[P]resumably, the district court judge did not conclude that Subsection (E) compliance was an issue in this case." Thus, the appellate court erred in ruling that Dr. Yue's failure to comply with all of the requirements of (E) was a lack of informed consent as a matter of law. Consent could have been obtained by Dr. Yue's having complied with Subsections (E), (A) or (C). The court reasoned the jury had ample evidence to decide that the written consent, combined with the verbal information Dr. Yue said he gave his patient, equated to valid informed consent.

The court also wrote that the jury instructions given by the district court judge were more in line with the requirements of Subsections (A) and (C), which require the physician to advise the patient of the nature, purpose and known risks associated with the procedure. As a result of this interpretation, the Supreme Court then concluded that the de novo standard of review used by the appellate court was inappropriate, and the manifest error standard should have been used. As result of that conclusion, the court ruled that rather than being allowed to substitute its own opinion in place of the fact-finder's under a de novo review, the manifest-error rule compelled the appellate court, before it could reverse, to find instead that there was no factual basis for the judgment of the trial court and that the record established the finding was clearly wrong/manifestly erroneous. In other words, the reviewing court should have asked whether the fact-finder's conclusion was reasonable. *Rosell v. ESCO*, 549 So.2d 840,844 (La. 1989); *Stobart v. State,* 612 So.2d 880, 882 (La.1993).

The court observed there was conflicting testimony on every assignment of error argued by the plaintiff. When the fact-finder's determination is based on the credibility of one or more witnesses versus another witness or witnesses (including expert witnesses), the trial court's finding "can virtually never be manifestly erroneous." *Bellard v. Am. Cen. Ins. Co.*, 07-1335 (La. 4/18/08), 980 So.2d 654, 672.

The case was remanded to the appellate court with instructions to consider and rule on all of the plaintiff's assignments of error.

—Robert J. David
Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.
Ste. 2800, 1100 Poydras St.
New Orleans, LA 70163-2800

Federal: U.S. Supreme Court Resolves Circuit Split on Valuation-Misstatement Tax Penalty

In *United States v. Woods*, 134 S.Ct.157 (2013), the U.S. Supreme Court upheld an IRS determination that the gross-valuation penalty applied to the liabilities of partners in certain transactions entered into primarily for tax avoidance purposes. In *Woods*, the taxpayers participated in an offsetting-option tax shelter designed to generate large paper losses by contributing option spreads to partnerships and creating an artificially high basis in a partner's partnership interest as the result of taking into account only the long component of the option spread and not the nearly-offsetting short component. The IRS determined that the partnerships had been formed solely for tax avoidance purposes and lacked economic substance and that the partnerships should be disregarded for tax purposes. Because there were no valid tax partnerships, the IRS concluded that the taxpayers had not established adjusted bases in their respective partnership interests in an amount greater than zero and any resulting tax underpayments were subject to the 40 percent I.R.C. § 6662(b)(3) accuracy-related penalty for gross valuation misstatements.

The tax-matters partner for both partnerships sought judicial review. The district court held that the partnerships were properly disregarded as shams but that the valuation-misstatement penalty did not apply. The 5th Circuit affirmed. The Supreme Court reversed the decision of the 5th Circuit with respect to the applicability of the accuracy-related penalty and determined that the § 6662(b) penalty for tax underpayments attributable to valuation misstatements is applicable to an underpayment resulting from a basis-inflating transaction subsequently disregarded for lack of economic substance.

The Supreme Court also resolved a jurisdictional-related issue and held that TEFRA gives courts in partnership-level proceedings jurisdiction to determine the applicability of any penalty that could result from an adjustment to a partnership item, even if imposing the penalty would also require determining affected or non-partnership items such as outside basis.

—**Jaye A. Calhoun** and
Christie B. Rao
Members, LSBA Taxation Section
McGlinchey Stafford, P.L.L.C.
601 Poydras St., 12th Flr.
New Orleans, LA 70130

State: Solar Energy Systems Tax Credit

The Louisiana Department of Revenue issued Revenue Information Bulletin No. 13-026 (RIB), which summarized numerous changes made in Act No. 428 of the 2013 Regular Session of the Louisiana Legislature to the former Wind or Solar Energy Systems tax credit (Solar Energy Credit) provided in La. R.S. 47:6030. Act No. 428 enacted the following changes:

► **Elimination of credit for wind energy systems**. The current Solar Energy Credit provides only two types of eligible systems — solar electric and solar thermal.

► **Elimination of credit for residential rental apartment complexes**. The current Solar Energy Credit provides only for installations at a "residence" or "home," which the Act defines as a "single-family detached dwelling."

► **Added licensing requirement.** Under the amended law, all energy systems must be purchased from and installed by a person who is licensed by the Louisiana State Licensing Board for State Contractors.

► **Added American Recovery and Reinvestment Act (ARRA) compliance.** All eligible system components purchased on or after July 1, 2013, must be compliant with the ARRA of 2009, and all non-ARRA-compliant components purchased before July 1, 2013, must be installed in a system that is placed in service before Jan. 1, 2014.

► **Added sunset date.** The current Solar Energy Credit includes a sunset date of Jan. 1, 2018.

► **Added per residence limitation.** Each residence is limited to one credit for the purchase and installation of a system, including residences for which a Solar Energy Credit was claimed prior to July 1, 2013.

► **Additional restrictions/requirements for leased energy systems**. The RIB provides that leased energy systems shall receive a credit equal to the *lesser* of the following two amounts:

> (1) effective Jan. 1, 2014, the credit is reduced from 50 percent to 38 percent of the first $25,000 of the cost of the purchase of a system; or
>
> (2) a system shall provide for no more than six kilowatts of energy and: for a system purchased and installed on or after July 1, 2013, and before July 1, 2014, the system shall cost no more than $4.50 per watt; for a system purchased and installed on or after July 1, 2014, and before July 1, 2015, the system shall cost no more than $3.50 per watt; for a system purchased and installed on or after July 1, 2015, and before July 1, 2018, the system shall cost no more than $2 per watt.

—**Antonio Charles Ferachi**
and
Bradley S. Blanchard
Members, LSBA Taxation Section
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821-4064

CHAIR'S MESSAGE

Spring is in the Air: YLD Staying Busy

By Kyle A. Ferachi


Kyle A. Ferachi

Spring is in the air!

I am writing this month's article in February and all I can think about is the beach. This up-and-down roller coaster of winter weather has me bundled up one day and in shorts the next. Good news is that the Louisiana State Bar Association's (LSBA) Annual Meeting is a few short months away. Planning where to stay in Sandestin and what CLEs are "must attends" takes my mind off of the cold days and on to the warmer months.

But, spring must come before summer. This year has been fantastic for the Young Lawyers Division (YLD). In the next few months, more opportunities abound for you to get involved. Please take a look at our page on the LSBA website and pick an event to attend or to offer assistance. We are hosting law school outreach events, Wills for Heroes programs and Barristers for Boards events.

Of course, the largest spring event hosted by the YLD is the annual High School Mock Trial Competition. This year, the event takes place in Shreveport on March 29. Hosting the competition in Shreveport fits in nicely with the YLD Council's goal of bringing the LSBA YLD to all parts of the state. If you can, attend the competition or assist by serving as a judge. The competition is a great way to give back to the youth in communities throughout the state.

On that note, I want to thank the Louisiana Bar Foundation's nine regional Community Partnership Panels for unanimously agreeing to assist the YLD in funding this year's competition through a Jock Scott Community Partnership Panel Grant. Without this funding help, this year's competition may not be the success it should.

Spring also is a time for cleaning. I recommend that all lawyers, not just the ones classified as "young," take some time to reflect on their New Year resolutions and assess what's been done to accomplish the goals. Are you organizing better? Spending more time with family and friends? Perhaps you're well on your way to losing those 15 pounds? Whatever the resolution, now is a great time to re-evaluate, adjust and move forward.

Back to the beach! Start planning, if you have not already done so, for the LSBA Annual Meeting. This year's meeting will have something for everyone. Great speakers, fantastic CLEs, a golf tournament and even a dinner dance! It promises to be a meeting you do not want to miss.

YOUNG LAWYERS SPOTLIGHT

Scott L. Sternberg
New Orleans


Scott L. Sternberg

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting New Orleans attorney Scott L. Sternberg.

Sternberg joined Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans as an associate in fall 2010. His practice involves general civil litigation, energy matters, successions litigation, media law, and admiralty and maritime. He also represents clients before the Louisiana Board of Ethics and other governmental entities.

He received a bachelor's degree in journalism in 2006 from Louisiana State University, where he was editor-in-chief of *The Daily Reveille*. After first working in Washington, D.C., he later continued his studies and received his JD degree and diploma in civil law, *cum laude,* in 2010 from LSU's Paul M. Hebert Law Center, where he was a member of the *Louisiana Law Review*, selected for the Moot Court Board and elected president of the Student Bar Association. He is a former elected student-member of the LSU System Board of Supervisors and serves on the LSU Law Chancellor's Young Alumni Leadership Council.

As a former journalist, Sternberg maintains a First Amendment practice and represents individuals and media outlets. He is a regular speaker on media law and teaches the subject at Loyola University's School of Mass Communication as an adjunct professor. He also taught at LSU as an adjunct professor.

He is a member of the New Orleans Young Leadership Council's board of directors, serving as general counsel. He is a member of the Meritas Leadership Institute Class of 2014. He was a member of the Louisiana State Bar Association's Leadership LSBA 2012-13 Class. He serves on the LSBA's Crystal Gavel Committee and the Publications Subcommittee of the Rules of Professional Conduct Committee.

Sternberg volunteers his time representing entrepreneurs affiliated with New Orleans' Idea Village and assists students seeking public records from governmental entities. In 2013, he was selected as one of *New Orleans Magazine's* "Top Lawyers of New Orleans" in communications law and on-air media legal analyst. In 2014, *Louisiana Super Lawyers* recognized him as a "Rising Star" in civil litigation-defense.

He likes to say he was born and raised up and down Highway 61: New Orleans, Baton Rouge and Natchez, Miss. He is married and has a newborn son. He is already indoctrinating his son with his love of LSU sports, the New Orleans Saints and the New Orleans Pelicans.

JUDICIAL Notes

By Robert Gunn, Louisiana Supreme Court | NEW JUDGES... APPOINTMENTS

New Judges

Barron C. Burmaster

Barron C. Burmaster was elected as judge of Section C, Jefferson Parish Juvenile Court. He earned his BA degree in 1986 from Loyola University and his JD degree in 1989 from Loyola University Law School. After graduation, he served as the criminal law clerk for the judges of the 24th Judicial District Court. In 1991, he was appointed as an assistant district attorney, serving in the felony, research and appeals and juvenile divisions. He was deputy chief of the Juvenile Division during his 14 years of service with the Division. Prior to his election to the bench, he was executive assistant district attorney. He served as a member of the Louisiana Legislature's Juvenile Justice Commission Advisory Board, a member of the board of directors for the Friends of Jefferson Child Advocacy Center (five years as president), a member of the Jefferson CASA Advisory Board, and a member of the Louisiana Supreme Court Committee to Establish Juvenile and Family Court Rules. He and his wife, Maria, are the parents of three children.

Jeffery T. Oglesbee

Jeffery T. Oglesbee was elected as judge of Division G, 21st Judicial District Court, Livingston, St. Helena and Tangipahoa parishes. He earned his BA degree in 1995 from Southeastern Louisiana University and his JD degree in 1998 from Louisiana State University Paul M. Hebert Law Center. While in college, he worked as a legislative assistant to Sen. John J. Hainkel, Jr. Following law school graduation, he worked as a law clerk for the judges of the 21st JDC. He has worked as a senior attorney for the Senate Commerce Committee in the Louisiana Legislature and was in the practice of law with the Mack Law Firm. He served as a prosecutor for the City of Walker from 2011-12 and as a magistrate from 2012 until his election to the bench. He and his wife, Allison, are the parents of one child.

Appointments

► Judge Andrea Price Janzen and Judge Kirk A. Vaughn were reappointed, by order of the Louisiana Supreme Court, to the Supreme Court Committee on Judicial Ethics for terms of office ending on Oct. 31, 2015.

► Carl A. Butler, George L. Crain and R. Lewis Smith, Jr. were reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for terms of office ending on Dec. 31, 2016.

► Carrie LeBlanc Jones was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office ending on Dec. 31, 2016.

► Frank A. Fertitta was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office ending on Dec. 31, 2014.

► Judge Roland L. Belsome was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College Board of Governors for a term of office ending on Dec. 31, 2016.

► Judge Sharon Ingram Marchman was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College Board of Governors for a term of office ending on Dec. 31, 2016.

Retirement

Orleans Parish Civil District Court Judge Michael G. Bagneris retired effective Dec. 11, 2013. He took his first oath as a judge of Civil District Court in 1993 after practicing law with the firm of Waltzer and Bagneris and working as executive counsel for former New Orleans Mayor Ernest N. (Dutch) Morial. He is a graduate of Yale University where he earned two BA degrees. He earned his JD degree in 1975 from Tulane University Law School. He has served as an assistant examiner for the Louisiana Bar Exam, a member of the Louisiana Judicial College, a member of the Supreme Court Ethics Committee and a member of the Supreme Court *Pro Se* Litigation Committee. He is also a former president of the Louisiana District Judges Association.

Death

Retired Crowley City Court Judge Edmund M. Reggie, 87, died Nov. 19, 2013. Judge Reggie earned his BA degree in 1946 from the Southwestern Louisiana Institute (now the University of Louisiana-Lafayette) and his JD degree in 1949 from Tulane University Law School. While in college, Reggie was active in the field of speech and was declared the nation's champion intercollegiate orator for two successive years. At the age of 19, while a law student at Tulane, he served as an instructor of speech in the College of Arts and Sciences. At Tulane, he was awarded the Eugene D. Saunders Scholarship for Legal Study, was active in Moot Court and was a member of La Societe du Droit Civile. In 1950, he became city judge of Crowley (at age 24) and served as judge on that court until 1975. In 1969, Crowley City Court was selected for a special honors award by the Standing Committee on Traffic Court Administration of the American Bar Association. In 1972, the ABA named his court second place winner in the nation in its category. In 1973, he served as chair of the Chief Justices' Special Commission to Study Constitutional Revision of Special Courts in Louisiana. He was involved in a number of areas of government on both the state and national level during his political career.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Kyle L. Wallace** has joined the firm as an associate.

Gerard J. Bourgeois, David M. Thorguson and William E. Bourgeois of Bourgeois Thorguson, L.L.C., in Morgan City announce that **Lindsey M. Bolton** (LL.M.) has joined the firm as an associate.

Chaffe McCall, L.L.P., announces that **Peter G. Strasser** has joined the firm's New Orleans office as a partner. Also, the firm announces the opening of its new office in Lake Charles, located in the Capital One Tower, Ste. 1640A, One Lakeshore Drive, Lake Charles, LA 70629, phone (337)419-1825.

Courington, Kiefer & Sommers, L.L.C., in New Orleans announces that **Jeffrey M. Burg** has joined the firm as a member.

Jones, Swanson, Huddell & Garrison, L.L.C., in New Orleans announces that Catherine E. (Katie) Lasky, Harvey S. (Tad) Bartlett III and Emma E.A. (Bessie) Daschbach have become members of the firm.

Liskow & Lewis, A.P.L.C., announces that four new associates have joined the firm's New Orleans office: Erin E. Bambrick, Keriann P. Langley, Lacey E. Rochester and Joseph T. Wilson.

Mouledoux, Bland, Legrand & Brackett, L.L.C., announces that **Cassie E. Preston** has joined the firm as an associate in the New Orleans office. Also, **Kirby P. Blanchard, Jr.** has joined the firm as an associate in the new Houma office. The office is located at 7731 Park Ave., Houma, LA 70364, phone (985)346-5024.

The Law Office of John W. Redmann, L.L.C., announces that **Teresa G. Castle** has joined the firm as an associate in the Metairie office. Also, **Miriam K. Crespo** has joined the firm as an associate in the new Gretna office, located at 1101 Westbank Expressway, Gretna, LA 70053, phone (504)433-5550.

Scofield, Gerard, Pohorelsky, Gallaugher & Landry, L.L.C., in Lake Charles announces that **Taylor P. Gay** has joined the firm as an associate.

Talley, Anthony, Hughes & Knight, L.L.C., announces that **Rachael P. Catalanotto** is now a partner in the firm's Mandeville office.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that Megan F. Bice, Ryan K. French, John A. Milazzo, Jr. and Vincent V. (Trey) Tumminello III have joined the firm as associates.

Continued next page


Richard J. Arsenault


Kirby P. Blanchard, Jr.


Lindsey M. Bolton


Jeffrey M. Burg


Teresa G. Castle


Rachael P. Catalanotto


Miriam K. Crespo


Lawrence N. Curtis


Harold J. Flanagan


Thomas M. Flanagan


Taylor P. Gay


Stephen J. Herman

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, will be a speaker at the Louisiana Law Review Multidistrict Litigation Symposium in March and the Harris Martin Mass Tort Conference in April. He also achieved the 2014 Martindale-Hubbell AV rating.

Charles R. (Chuck) Davoli, of counsel with Moore, Thompson & Lee, A.P.L.C., in Baton Rouge, was installed as the 18th president of the national Workers' Injury Law & Advocacy Group. He also owns and operates Charles Davoli, L.L.C., workers' compensation mediation, subscription, consultation and training services.

Stephen J. Herman, a partner in the New Orleans firm of Herman, Herman & Katz, L.L.C., was named president-elect of the Louisiana Association for Justice. His term will begin in September 2014.

Steven J. Lane, managing partner in the New Orleans firm of Herman, Herman & Katz, L.L.C., was named 2013-14 chair of the New Orleans Bar Association's Family Law Committee.

J. Burton LeBlanc IV, an attorney in the Baton Rouge office of Baron & Budd, P.C., was elected president of the American Association for Justice.

Ryan M. McCabe, an associate in the Steeg Law Firm, L.L.C., in New Orleans, was appointed chair of the Professional Ethics Committee for the Federal Bar Association.

Christopher D. Mora, a commander in the Navy JAG Corps, received the Defense Meritorious Service Medal, the Afghanistan Campaign Medal and the NATO Medal following completion of his combat deployment to Afghanistan as the chief international and operational law advisor to NATO Training Mission-Afghanistan and Combined Security Transition Command-Afghanistan, during which he travelled throughout the war zone to train soldiers on the Law of War and Rules of Engagement. In November 2013, he completed his active duty service and was named general counsel for the Louisiana Department of Agriculture & Forestry.

Attorney Rebecca L. Riall, with the Riall Law Office, L.L.C., in Zwolle, graduated with a doctoral degree in anthropology from Indiana University in Bloomington in December 2013. Dr. Riall's dissertation focused on the legal anthropology of federal and state recognition of American Indian nations and included ethnographic fieldwork with the Choctaw-Apache Community of Ebarb, La.

John F. (Jack) F. Robichaux, member/manager at Robichaux, Mize, Wadsack & Richardson, L.L.C. in Lake Charles and Ironclad Title, L.L.C., in Lake Charles, is the recipient of the National Title Professional (NTP) designation from the American Land Title Association.

PUBLICATIONS

***The Best Lawyers in America* 2014**

Law Office of Larry Curtis (Lafayette): **Lawrence N. Curtis**.

Flanagan Partners, L.L.P. (New Orleans): **Harold J. Flanagan** and **Thomas M. Flanagan**.

Irwin Fritchie Urquhart & Moore, L.L.C. (New Orleans): Timothy F. Daniels, Dow Michael Edwards, Gus A. Fritchie III, James B. Irwin, Richard E. McCormack, Kim E. Moore, David W. O'Quinn, Brian P. Quirk, John W. Sinnott and Quentin F. Urquhart, Jr.

Louisiana Super Lawyers 2014

Steeg Law Firm, L.L.C. (New Orleans): **Ryan M. McCabe**.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June/July 2014	April 4, 2014
Aug./Sept. 2014	June 4, 2014
Oct./Nov. 2014	Aug. 4, 2014

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator
Darlene M. LaBranche,
***Louisiana Bar Journal*,**
601 St. Charles Ave.,
New Orleans, LA 70130-3404

or email dlabranche@lsba.org.


Steven J. Lane


Ryan M. McCabe


Christopher D. Mora


Cassie E. Preston


Peter G. Strasser


Kyle L. Wallace

UPDATE

Five Louisiana State University (LSU) Paul M. Hebert Law Center graduates were honored with 2013 Distinguished Alumnus and Distinguished Achievement Awards. From left, Richard F. (Dick) Knight; Anne-Gwin Duval, accepting the award on behalf of her father, Hon. Stanwood R. Duval, Jr.; LSU Law Center Chancellor Jack M. Weiss; Vice Chancellor for Academic Affairs Cheney C. Joseph, Jr., recognized as the Distinguished Alumnus; Marilyn C. Maloney; and Michael A. Patterson.

LSU Law Center Honors 2013 Distinguished Alumnus, Achievement Honorees

Five Louisiana State University (LSU) Paul M. Hebert Law Center graduates were honored with Distinguished Alumnus and Distinguished Achievement Awards during the awards dinner on Nov. 1, 2013, in Baton Rouge.

LSU Law Center Vice Chancellor for Academic Affairs Cheney C. Joseph, Jr. was honored as the 2013 Distinguished Alumnus of the Year.

Hon. Stanwood R. Duval, Jr., Richard F. Knight, Marilyn C. Maloney and Michael A. Patterson received 2013 Distinguished Achievement Awards.

Video tributes were shown for each honoree. An event highlight was a "roast" of Joseph by LSU Law Center Chancellor Jack M. Weiss, along with longtime friends and colleagues Professor William R. Corbett and Charles S. McCowan.

The Distinguished Alumnus Award is given annually to a graduate for professional achievement and loyalty to the LSU Law Center. The Distinguished Achievement Awards recognize graduates for professional achievement and career distinction, service to and support of LSU Law Center, and service to the community.

Joseph received his JD degree in 1969 from LSU Law Center. He joined the LSU Law faculty in 1972. During his career, he served as district attorney in the 19th Judicial District and as U.S. attorney for the U.S. District Court for the Middle District of Louisiana. He is currently the executive director of the Louisiana Judicial College.

Judge Duval, who has served as U.S. District judge for the Eastern District of Louisiana since 1994, achieved senior status in the court in 2008. He received his JD degree in 1966 from LSU Law Center. During his career, he practiced law in Houma and served as parish attorney for the Terrebonne Parish Consolidated Government. He was a member of the Advisory Committee on Appellate Rules of the Judicial Conference of the United States Courts.

Knight, first and current board chair of Resource Bank, is a 1958 graduate of LSU Law Center. He served as Louisiana Supreme Court judicial administrator and was a partner in the Bogalusa law firm of Talley, Anthony, Hughes & Knight. He chairs the Louisiana State Law Institute's Civil Procedure Committee and is a member of the Law Center Chancellor's Council.

Maloney, a shareholder with Liskow & Lewis, A.P.L.C., is the founding chair of the firm's Houston office. She received her JD degree in 1975 from LSU Law Center. She is chair emeritus of the Louisiana State Law Institute and a member of the Law Center Chancellor's Council.

Patterson, a 1971 graduate of LSU Law Center, is a partner in the Baton Rouge office of Long Law Firm, L.L.P., and a former president of the Louisiana State Bar Association. He received a Certificate in Dispute Resolution and LLM in Dispute Resolution from Pepperdine University. He is a founding and managing member of the Patterson Resolution Group. He is an adjunct professor of trial advocacy and evidence at LSU Law Center and a member of the Law Center Chancellor's Council.

Boyle Receives Anti-Defamation League's Torch of Liberty Award

Kim M. Boyle

Kim M. Boyle, a partner in the New Orleans office of Phelps Dunbar, L.L.P., is the 2013 recipient of the Anti-Defamation League's A.I. Botnick Torch of Liberty Award. The award, presented this past December, is given annually to individuals who have worked for diversity and inclusion through their community leadership and service.

Boyle, who practices in the areas of labor and employment and litigation, is very active in professional and community organizations.

In 2009-10, she served as the first female African-American president of the Louisiana State Bar Association. She also was the first African-American president of the New Orleans Bar Association. She has been active with the Federal Bar Association, the American Bar Association, the National Bar Association and the Louis A. Martinet Legal Society, Inc.

Boyle serves on the boards of trustees for Touro Infirmary, Tulane University and Princeton University. She also serves on the board of directors for the Lawyers Committee for Civil Rights Under the Law.

Francophone Section Commemorates LASC Bicentennial

The Louisiana State Bar Association's (LSBA) Francophone Section held an afternoon symposium this past November to commemorate the Bicentennial of the Louisiana Supreme Court. The CLE program, conducted at the Historic New Orleans Collection, featured four heroes of the civil law in Louisiana.

Opening remarks were made by Francophone Section Chair Warren A. Perrin and by LSBA President Richard K. Leefe.

Louisiana Supreme Court Justice Greg G. Guidry gave an overview of the court's 2013 Bicentennial events and several justices who were important in the development of the court.

Francophone Section Vice Chair Louis R. Koerner introduced the four panelists:

► Louisiana State University Paul M. Hebert Law Center Professor Olivier Moréteau discussed Francois-Xavier Martin and gave an historical overview of the court in the early 19th century;

► U.S. Ambassador (Ret.) Grover Joseph Rees III, a former law clerk of Justice Albert Tate, gave a presentation on Tate's storied career as a jurist;

► Judge James L. Dennis, presently on the bench of the U.S. 5th Circuit Court of Appeals, discussed his 20 years on the Louisiana Supreme Court and the influence of former Justice Mack E. Barham; and

► Louisiana Supreme Court Chief Justice (Ret.) Pascal F. Calogero, Jr. discussed his early years as a lawyer, his record-breaking tenure on the Supreme Court and his successful efforts to have the court's historic home restored.

Lawyer Advertising Filing Requirement

Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements and all unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) — unless specifically exempt under Rule 7.8 — *are required to be filed* with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel, prior to or concurrent with first use/dissemination. Written evaluation for compliance with the Rules will be provided within 30 days of receipt of a complete filing. Failure to file/late filing will expose the advertising lawyer(s) to risk of challenge, complaint and/or disciplinary consequences.

The necessary Filing Application Form, information about the filing and evaluation process, the required filing fee(s) and the pertinent Rules are available online at: *www.lsba.org/members/LawyerAdvertising.aspx*.

Inquiries, questions and requests for assistance may be directed to LSBA Ethics Counsel Richard P. Lemmler, Jr., RLemmler@LSBA.org, (800)421-5722, ext. 144, or direct dial (504)619-0144.

The Lafayette Bar Foundation presented Outstanding Attorney Awards to several volunteers working through the Lafayette Volunteer Lawyers program. Among the honorees were, from left, K. Wade Trahan, Grady M. Spears, Dwazendra J. Smith, Dona K. Renegar, Michael A. Rainey, Seth T. Mansfield, Christopher M. Ludeau, Cliff A. LaCour, Kenneth W. Jones, Jr., Valerie G. Garrett, Jeffrey K. Coreil, Elizabeth A. Dugal and Judith R. Kennedy.

Members of the Lafayette Bar Foundation and the Louisiana Bar Foundation attended the event recognizing attorneys handling pro bono cases through the Lafayette Volunteer Lawyers program. From left, John G. Swift, Laura Sewell, Rebekah R. Huggins, Leo C. Hamilton, Donna Cuneo, Tammy DeRouen and Miles A. Matt.

Lafayette Bar Foundation Recognizes Volunteers at Pro Bono Ceremony

Attorneys, judges of the 15th Judicial District Court, City Court judges, Louisiana Bar Foundation and Lafayette Bar Foundation representatives and Lafayette Bar Association staff members gathered this past October to recognize lawyers who volunteered to handle pro bono cases through the Lafayette Bar Foundation. The event, conducted during National Pro Bono Month, also celebrated the 25th anniversary of the Lafayette Volunteer Lawyers (LVL) program. The LVL program accepts approximately 200-300 cases per year, primarily in the area of family law.

The Foundation presented 17 Outstanding Attorney Awards to LVL volunteers: Jeffrey K. Coreil, Elizabeth A. Dugal, Bradford H. Felder, Valerie G. Garrett, Kenneth W. Jones, Jr., David M. Kaufman, Judith R. Kennedy, Gregory A. Koury, Cliff A. LaCour, Christopher M. Ludeau, Seth T. Mansfield, Lindsay L. Meador, Michael A. Rainey, Dona K. Renegar, Dwazendra J. Smith, Grady M. Spears and K. Wade Trahan.

Attorney K. Wade Trahan received an award for assisting more than 30 clients with the Homeless Experience Legal Protection (H.E.L.P) Program. Since 2005, H.E.L.P. has assisted nearly 2,000 homeless citizens in Acadiana in obtaining certified copies of birth records and other legal needs.

Attorney Kenneth W. Jones, Jr. received the Protective Order Panel Award for accepting several complicated cases this past year. The Protective Order Panel helps individuals in immediate need of protection from a domestic abuse situation but who cannot afford legal representation.

Judge David A. Blanchet presented the Solo Practitioner Award to attorney Judith R. Kennedy, who has served as LVL chair and has handled several intense cases such as adoptions, divorces with custody and numerous hours with Protective Order clients.

The Small Firm Award was presented to Huval, Veazey, Felder & Renegar, L.L.C. The firm accepts divorce cases with child support and custody issues and Protective Order Panel cases.

The Large Firm Award was presented to NeunerPate. The firm helped nearly 100 clients this past year within the three programs supported by LVL.

A special President's Award was presented to Miles A. Matt, who has served as president of both the Lafayette Bar Association and Foundation. He oversaw the renovation of the Association's new building, and he restructured the LVL program so cases are placed efficiently and quickly.

The Lafayette Bar Foundation also announced its plans to establish a new assistance program called "Counsel on Call." As of Nov. 1, 2013, every Friday from 9-10 a.m., lawyer volunteers staff the library to provide legal information to the public.

Mark C. Surprenant, left, was installed as 2013-14 president of the New Orleans Bar Association. He succeeds Timothy F. Daniels, center. Also during the event, John E. Galloway, right, received the Arceneaux Professionalism Award.

The New Orleans Bar Association recognized its 50-year members during its Annual Dinner this past November. Among those honored were, seated from left, William M. Detweiler, Jacqueline McPherson and Harry T. Lemmon. Standing from left, Daniel Lund, Cameron C. Gamble and C. Gordon Johnson, Jr.

NOBA Installs 2013-14 Board

The New Orleans Bar Association's (NOBA) 2013-14 board of directors was installed during the association's 89th Annual Dinner this past November.

Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., is the 2013-14 president.

Joining Surprenant are Walter J. Leger, Jr., a partner in Leger & Shaw, president-elect; Christopher K. Ralston, a partner in Phelps Dunbar, L.L.P., vice president; Sharonda R. Williams, a New Orleans city attorney, vice president; Robert P. Thibeaux, a member of Sher Garner Cahill Richter Klein & Hilbert, L.L.C., secretary; and Camala E. Capodice, a member of Irwin Fritchie Urquhart & Moore, L.L.C., Young Lawyers Section chair.

Continuing service on the board are James M. Williams, a partner in Gauthier, Houghtaling & Williams, vice president; Judy Y. Barrasso, a member in Barrasso, Usdin, Kupperman, Freeman & Sarver, L.L.C., treasurer; and Timothy F. Daniels, a member in Irwin Fritchie Urquhart & Moore, L.L.C., immediate past president.

Board members elected with terms expiring in 2014 are Jan M. Hayden and Darryl M. Phillips. Board members elected with terms expiring in 2015 are Dana M. Douglas and Peter E. Sperling. Board members elected with terms expiring in 2016 are Lisa M. Africk, Brandon E. Davis, James C. Gulotta, Jr. and Jason P. Waguespack.

John E. Galloway was honored with the Arceneaux Professionalism Award.

Fifty-year members were honored, including William M. Detweiler, Cameron C. Gamble, C. Gordon Johnson, Jr., Harry T. Lemmon, Daniel Lund, W. Eric Lundin III, Jacqueline McPherson, Timothy G. Schafer and William F. Wessel.

President's Message

Louisiana Campaign to Preserve Civil Legal Aid: *It's Not Justice If It's Not Equal*

By Leo C. Hamilton

I am proud to announce that on Jan. 25 the Louisiana State Bar Association's (LSBA) House of Delegates adopted a resolution supporting the **Louisiana Campaign to Preserve Civil Legal Aid**, a united effort of the leadership of the LSBA and the Louisiana Bar Foundation (LBF), together with other key Louisiana legal service organizations. The campaign will raise funds for civil legal aid and grow the pool of dollars available for those organizations that provide essential legal services.

My focus this year as president continues to address the critical need for increased funding of civil legal aid in Louisiana. I remind you that civil legal aid provides *free* legal assistance to those who would otherwise go unrepresented. Unlike in criminal cases, there is no constitutional guarantee of counsel in civil cases.

Louisiana's poverty rates are among the nation's highest — 19.9 percent compared to 15.9 percent nationally. Nearly one in five Louisiana residents lived in poverty last year, the third highest rate in the nation. That includes more than 300,000 children.

Leo C. Hamilton

The Legal Services Corp. (LSC), the largest donor nationally for civil legal aid, has seen funding per eligible client drop by almost 60 percent over the past decade. Louisiana's civil legal aid programs have lost more than a third of their LSC funding over the last five years, which has resulted in a significant dependence on IOLTA funding from the LBF. Despite that growing dependence, IOLTA funds declined 74 percent between 2007 and 2011, resulting in unavoidable cuts in IOLTA funding directed to legal services for our poorest citizens.

With an increasing client base and current funding drastically cut or eliminated, alternate sources of funding are needed to support our civil legal aid programs. Declines in funding, combined with Louisiana's high poverty, place our already challenged legal aid system in crisis. Our civil legal aid programs will not survive without our help.

Assistance from the legal community is critical to maintaining and developing resources that will provide low-income Louisiana citizens with meaningful access to the justice system. I believe that the oath we took upon becoming lawyers places upon all lawyers, as a profession, the obligation to not only care about civil legal aid, but also to actively do something about it. Please make a commitment to improving the availability of legal services to all citizens by supporting the Louisiana Campaign to Preserve Civil Legal Aid and make a donation at *www.raisingthebar.org*.

LBF's Annual Fellows Gala Set for April 11

The Louisiana Bar Foundation (LBF) will honor five distinguished members of the legal profession at the 28th Annual Fellows Gala on Friday, April 11, at the Hyatt Regency New Orleans, 601 Loyola Ave., said 2014 Gala Co-Chairs Kelsey Kornick Funes and Christopher K. Ralston.

The honorees are Distinguished Jurist Carl E. Stewart, Distinguished Attorney Frank X. Neuner, Jr., Distinguished Professors William R. Corbett and Robert Force, and Calogero Justice Award recipient Hon. Robert H. Morrison III.

The gala begins at 7 p.m. and will feature a live auction. A patron party will be held prior to the gala.

Organizers are seeking event sponsors. Proceeds will help strengthen the programs supported and provided by the LBF. Sponsorships are available at six levels. To review all levels, go to: *www.raisingthebar.org*.

Individual tickets to the gala are $150. Young lawyer individual gala tickets are $100. Gala ticket reservations can be made by credit card at *www.raisingthebar.org*. For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

Serving on the Annual Fellows Gala Committee are board liaison Tara G. Richard, Michael B. DePetrillo, Carla Tircuit Dillon, Michael D. Ferachi, Lauren E. Godshall, Steven F. Griffith, Jr., Jan M. Hayden, Colleen C. Jarrott, Chauntis T. Jenkins, Karli Glascock Johnson, Hon. C. Wendell Manning, John H. Musser IV, Adrian G. Nadeau, Kelsey L. Meeks, John D. Sileo, Sarah E. Stogner, Laranda Moffett Walker and Sharonda R. Williams.

Discounted rooms at the Hyatt Regency New Orleans are available for $219 a night for Thursday, April 10, and Friday, April 11. Reservations must be made before Friday, March 21, to get the discounted rate. Call the hotel directly at 1-888-421-1442 and reference "Louisiana Bar Foundation" to make a reservation or go to: *http://resweb.passkey.com/go/LAbarfoundation2014*.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces two new Fellows:

Hon. Joy Cossich Lobrano ..... New Orleans

Jennifer H. Johnson..... Monroe

LBF Seeks 2014-16 Scholar-in-Residence

The Louisiana Bar Foundation (LBF) is accepting applications for a Scholar-in-Residence to serve a two-year term beginning in July 1, 2014. A $7,500 honorarium will be paid to the scholar as consideration for his/her work product.

Over the term of the appointment, the scholar will produce for publication a scholarly, quality written contribution on a subject and in a form agreed upon with the LBF, such as a law review article, book, booklet, essay or other legal publication, including film, television projects, etc., suitable for the intended LBF purpose.

The purpose of the Scholar-in-Residence appointment is to incorporate an academic and scholarly dimension to the LBF's overall efforts of preserving, honoring and improving the system of justice by funding and otherwise promoting efforts that enhance the legal profession, increase public understanding of the legal system, and advance the reality of equal justice under the law. The appointment is intended to enrich the academic and intellectual perspective of the LBF's efforts, to enhance the LBF's overall educational program, and to support legal education in Louisiana by bringing the practicing bar and Louisiana's law schools closer together.

Applicants should submit a specific proposal, including topic, prospectus, suggested format, proposed timeline and applicant's qualifications. Applications must be received by April 30 and submitted to: Louisiana Bar Foundation, Education Committee, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112; faxed to (504)566-1926; or emailed to dennette@raisingthebar.org.

For more information, contact Dennette L. Young at the Louisiana Bar Foundation by email at dennette@raisingthebar.org or by phone at (504)561-1046.

LBF Annual Fellows Membership Meeting Set for April 11

The Louisiana Bar Foundation's (LBF) Annual Fellows Membership Meeting will begin at noon Friday, April 11, at the Hyatt Regency New Orleans, 601 Loyola Ave. This luncheon meeting is an opportunity for Fellows to be updated on LBF activities and elect new board members. The President's Award will be presented and recognition will be given to the 2013 Distinguished Honorees and the Calogero Justice Award recipient.

All LBF Fellows in good standing will receive an official meeting notice with the Board slate and a committee selection form in early March. For more information, contact Laura Sewell at laura@raisingthebar.org or (504)561-1046.

ANSWERS for puzzle on page 356.

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AV-rated downtown New Orleans commercial litigation and transactional law firm is currently seeking an experienced attorney, minimum three years' to eight years' experience, for its New Orleans office to work on commercial transactional real estate and banking matters. Must have excellent academic credentials. Email résumé to foster@carverdarden.com, or mail to: Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C., Attention: Russell L. Foster, Ste. 3100, 1100 Poydras St., New Orleans, LA 70163.

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Notice is hereby given that Attlah D. Burrell is filing a petition/application for reinstatement to the practice of law. Individuals may file notices of concurrence or objection with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

Notice is hereby given that Martha E. Minnieweather has filed a petition and application for reinstatement for the practice of law in Louisiana. Individuals may file notice of concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

Notice is hereby given that C. Gary Wainwright intends to make application for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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The Last WORD

By Joseph I. Giarrusso III

THE GENERAL AND CAPTAIN JUSTICE

Outsiders poke fun at Louisiana for our own way of doing things and our unique nomenclature. But a couple of lawyers in Tennessee have us beat. Recently, Williamson County Assistant District Attorney General (see, we're not the only ones with funny names!) Tammy Rettig filed an unusual motion with a local district court in an aggravated burglary case. Apparently, Rettig was sick and tired of her opponent — a local defense attorney named Drew Justice — calling her client "the Government."

Rettig's motion sought to redress this perceived grievance: "[T]he State has noticed in the past few years that it has become commonplace during trials for attorneys for defendants, and especially Mr. Justice, to refer to State's attorneys as 'the Government . . . .' The State believes that such a reference is used in a derogatory way and is meant to make the State's attorney seem oppressive and to inflame the jury." Rettig, however, did not stop there. She suggested alternatives to Justice's "oppressive" moniker, including "General Rettig, the Assistant District Attorney General, Mrs. Rettig, or simply the State of Tennessee."

This was one of those moments where questionable professional conduct and comedy intersected. The defense opposed the motion on traditional grounds, arguing that arcane and little-litigated provisions like the First Amendment protected the defendant's free speech. But Justice was prepared with a contingency if the court granted General Rettig's motion. Justice argued that his clients had rights, too. He demanded that the defendant be referred to as "Mister," "the Citizen Accused" or "that innocent man." Why the last name? Because his client is, after all, innocent until proven guilty.

Justice did not only propose these nicknames for his client. He wanted to ride shotgun and called for equal treatment under the law, asking to be known during trial as "Defender of the Innocent" or "Guardian of the Innocent." And, if Rettig wanted to be known by the military-like title of General Rettig, he demanded to be known during trial as "Captain Justice."

I'm curious whether the use of Captain Justice — apparently no trademark pending — violates Louisiana's advertising rules. Consider the marketing opportunities Drew Justice has stumbled upon. If your last name is Smith, Jones, Fornias or Giarrusso, this marketing bonanza will not work for you. Rettig already stole General from me depriving me of the euphony and consonance of General Giarrusso. Generalissimo Giuseppe Giarrusso sounds too much like a third-world dictator or what I insist my children call me. Take that Mommy Dearest. Giarrusso the Grammarian, while catchy, is just setting myself up for fialure (sic).

But maybe you have some colleagues who qualify. I am working on a case now with yet another Tennessee lawyer named Jim Sanders. His nickname? The Colonel. The Colonel's colleague? Mike Cash. In plaintiffs' cases, we could call him "Cash In." In defendants' cases, cynics might call him "Cash Out." His preferred name would be "Make a Splash with Cash."

Thank you Drew (Captain Justice) for letting us capitalize (Cash In) on this kernel (Colonel) of a story. Sincerely, the Generalissimo (Giuseppe Giarrusso).

*Joseph I. Giarrusso III is a shareholder in the New Orleans office of Liskow & Lewis, P.L.C. He received his JD degree in 2001 from Louisiana State University Paul M. Hebert Law Center (*Louisiana Law Review *and Order of the Coif). He is admitted to practice in Louisiana and Texas.*

Joseph I. Giarrusso III

The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed. But Editor Barry H. Grodsky is broadening the scope of the section, including "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email Grodsky at bgrodsky@taggartmorton.com or LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.

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- **Track programming**
- **Business meetings, networking and entertaining social events**
- **Nationally recognized speakers**
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- **Installation of the 2014-15 officers and much, much more.**

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